WASHINGTON UPDATE: 
THE GOOD, THE BAD & 
THE UGLY 
GAMES 2017 WINTER MEETING 
FEBRUARY 17, 2017 
Cara Bachenheimer 
Invacare Corporation

TODAY’S AGENDA
• 21st Century Cures Law
• The DC Environment
• Competitive Bidding
• OIG & GAO
• Megavote!

21ST CENTURY CURES ACT
Signed into law: December 13, 2016
Payment Relief in Non-Bid Areas
• July 1-December 31, 2016 payment cuts in non-competitive bid areas will be retroactively delayed until January 1, 2017
• CMS has not yet issued guidance on how it will implement but has said it will “instruct” DMACs
2/28/2017

21ST CENTURY CURES ACT
SEC. 16007. EXTENSION OF THE TRANSITION TO NEW PAYMENT RATES FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDICARE PROGRAM.

SEC. 16007. EXTENSION OF THE TRANSITION TO NEW PAYMENT RATES FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDICARE PROGRAM.

(a) IN GENERAL.—The Secretary of HHS shall extend the transition period described in clause (i) of section 414.210(g)(9) of title 42, CFR, from June 30, 2016, to December 31, 2016 (with the full implementation described in clause (ii) of such section applying to items and services furnished with dates of service on or after January 1, 2017).

42 CFR § 414.210(g)(9)

(9) Transition rules. The payment adjustments described above are phased in as follows:

(i) For applicable items and services furnished with dates of service from January 1, 2016, through June 30, 2016, based on the fee schedule amount for the area is equal to 50 percent of the adjusted payment amount established under this section and 50 percent of the unadjusted fee schedule amount.

(ii) For items and services furnished with dates of service on or after July 1, 2016, the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under this section.

Mandate to Re-Write Non-Bid Rate Rule
SEC. 16008. REQUIREMENTS IN DETERMINING ADJUSTMENTS USING INFORMATION FROM COMPETITIVE BIDDING PROGRAMS.

(a) IN GENERAL.—Section 1834(a)(1)(G) of the Social Security Act (42 U.S.C. 1395m(a)(1)(G)) is amended by adding at the end the following new sentence: “In the case of items and services furnished on or after January 1, 2019, in making any adjustments under clause (ii) or (iii) of subparagraph (F), under subsection (h)(1)(H)(ii), or under section 1842(s)(3)(B), the Secretary shall—

(i) solicit and take into account stakeholder input; and

(ii) take into account the highest amount bid by a winning supplier in a competitive acquisition area and a comparison of each of the following with respect to non-competitive acquisition areas and competitive acquisition areas:

(I) The average travel distance and cost associated with furnishing items and services in the area.

(II) The average volume of items and services furnished by suppliers in the area.

(III) The number of suppliers in the area.”.

MEDICAID PAYMENT CUT

Medicaid “pay-for” included in same package

- Advances by one year the previous law to October 1, 2018 (instead of January 1, 2019)
- Will limit the federal portion of Medicaid state fee for service DME rate to local bid rate
- Impact varies by states — some but not all are higher than Medicare
- States already have the authority to do same
- Not something industry agreed to
The D.C. Environment

NEW CONGRESS, NEW PRESIDENT

• 115th Congress
  • Republicans control House 241-194
    • Rs netted -6, Ds netted +6
  • Republicans control Senate 52-48
    • Rs netted -2, Ds netted +2
      • But: need 60 Senate votes to avoid filibuster
  • A “Republican” President/Administration

WHAT TO EXPECT FROM CONGRESS

• Future of Obamacare?
  • Political hurdles: repeal & replace, costs, insurance lobby, tough to get rid of mandates and keep the popular pre-existing condition and “26 and under” policies, leave 20M uninsured?
  • Republican plan to use “reconciliation” requiring only 50 Senate votes
  • Trump’s pledge to “Modernize Medicare” =?
• Medicaid and the States (AR, IN & KY) - Block grants instead?
The Trump Administration

HHS Secretary Nominee Tom Price
- CMS, FDA, CDC, NIH, etc.
- HME Champion in the House
- Led HME industry’s effort to replace Medicare DME competitive bidding program with a market-based auction: “Market Pricing Program”
- Significant Administrative authority
- Opposes many CMMI demos and PAC reforms

What can the new Administration Do?
- The statutory parameters of the DME bid program
- CMS regulations
- Details regarding how CMS uses information from the bid program to adjust payments in non-bid areas
- Timing of Phase-In
- Working with Republican Congress

Competitive Bidding
### COMPETITIVE BIDDING

<table>
<thead>
<tr>
<th></th>
<th>Round 1</th>
<th>Round 2</th>
<th>Non-Bid areas</th>
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<tbody>
<tr>
<td>Area</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>6%</td>
<td>44%</td>
<td>50%</td>
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<tr>
<td>DME providers dropped</td>
<td>0/13</td>
<td>0/117</td>
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<tr>
<td>Rounds &amp; current contract period</td>
<td>Jan 1 2017-Dec 31 2018</td>
<td>July 1, 2016-Dec 31 2018</td>
<td>Payments reduced Jan 1 2016 July 1, 2018 reductions &quot;delayed&quot; until Jan 1 2017</td>
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<td>Next contract period</td>
<td>Begin Jan 1, 2019</td>
<td>Begin Jan 1, 2019</td>
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<td>288</td>
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<tr>
<td>Far West</td>
<td>1,287</td>
<td>983</td>
<td>688</td>
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<td>TOTAL</td>
<td>10,540</td>
<td>8,345</td>
<td>6,419</td>
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### CMS DME & COMPETITIVE BIDDING RULE

**MACRA Implementation**

- State Licensure
- Surety Bond Implementation
  - April 2016 law, Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) designed to ensure that bidders honor their bids and disincentive unscrupulous bidding
  - Effective for contracts beginning January 2019
  - $50,000 per CBA
CMS DME & COMPETITIVE BIDDING RULE

- November 2016
- Appeals process in bid program expanded to any breach of contract
- 2019 “Merger” of Rounds 1 and 2
- Future Bid Ceilings
  - Raise to 2015 fee schedule levels

ROUND 2019

- January 31, 2017
  - CMS announces next steps in Round 2019
- February 7, 2017
  - CMS announces “temporary delay”

Spring 2017
- Bidding timeline, bidder education program, and bidder registration period to obtain user ID and password begins

Summer 2017
- Bidding begins

ROUND 2019 - CBAS

- 141 CBAs total
- Contracts effective Jan 1, 2019 – Dec. 31, 2021
- 10 new CBAs specific to CPAP
  - “Bundling” phase-in per November 2015 CMS rule
- 5 CBAs – payment on a non-capped monthly rental basis Bid for monthly continuous rental payment, cover all items, repairs, replacement, etc.
- 5 CBAs – payment on a capped monthly rental basis
**2019 PRODUCT CATEGORIES**

- Enteral
- General HME (beds, Groups 1 & 2 support surfaces, commode chairs, patient lifts, seat lifts)
- Insulin Pumps and Supplies – NEW - national
- Mail-Order Diabetes Testing Supplies
- Nebulizers
- NPWT Pumps & accessories
- Respiratory (oxygen, equipment, & supplies; CPAP devices & RADs)
- Standard Mobility Equipment & Accessories (walkers, standard power and manual wheelchairs, scooters, & accessories)
- TENS

**“LEAD ITEM” BIDDING 2019**

- CMS solution for “price inversion” - a result of “unbalanced bidding” (e.g., Groups 1 and 2 power wheelchairs)
- For 6 groups of “similar equipment: hospital beds, seat lifts, support surface mattresses, TENS, walkers, standards power wheelchairs
- Submit a bid for the “lead item” – highest # allowed services in 2012
- SPA for lead item determines SPAs for “dependent” items within the group

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<tr>
<th>HCPCS Code</th>
<th>Walker Features</th>
<th>2012 Allowed Services</th>
<th>Avg 2010 Rental Fee</th>
<th>Relative Ratio</th>
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<td>Folding, Wheels (Lead Item)</td>
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<td>E0143</td>
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<td>$64.97</td>
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OPPORTUNITIES?

- Improve Payment Rates in Non-Bid Areas
  - Requires changes to November 2014 CMS final rule
- Improve the Current Bid Program – think MPP elements
  - Clearing Price
  - Capacity Issues
  - Transparency Issues
  - Product Category Issues
  - Grandfathering - Snowbirds
- "Market Pricing Program" Demonstration?

OIG & GAO

- OIG Work Plan FY 2016
  - PMDs – CPT, lump-sum vs. rental, savings?
  - OME access issues in CBAs?
  - Competitive bidding mandatory post-award audit
  - PMDs – supplier compliance with F2F rule and other payment rules
  - Nebulizers (+drugs) – supplier compliance with payment rules
  - Increased billing for ventilators, DMEs, CPAPs

- GAO Recent Reports
  - Bidding Results from CMS's Durable Medical Equipment Competitive Bidding Program, Dec 2014
  - Second Year Update for CMS's Durable Medical Equipment Competitive Bidding Program Round 1 Rebid, April 2014

MEGAVOTE

- Do you track your federal legislators' votes?
- “MegaVote” in search engine
- Key votes, links to send emails, upcoming votes and send email before votes to provide comments
  - www.congress.gov
- Congress’ web site where you can track bills