

The DMEPOS Relief Act of 2022 (H.R. 6641) - Support Legislation to Provide Critical Relief for Durable Medical Equipment in Former Competitive Bidding Areas

Issue

The COVID-19 pandemic has exacerbated acquisition and operational challenges for suppliers of Durable Medical Equipment (DME – also commonly referred to as Home Medical Equipment). Unlike other industries, DME suppliers are constrained by pre-determined, set Medicare fee schedules that fail to factor in the increased costs of providing care. This has resulted in an unsustainable reimbursement environment that jeopardizes patient access to care and threatens the financial viability of DME suppliers and their ability to meet their communities' needs.

AAHomecare and other DME stakeholders urge Congress to support the DMEPOS Relief Act of 2022 (H.R. 6641) which would provide for a 90/10 blended payment rate (90% competitive bidding rates/10% unadjusted Medicare fee schedule rates) for the 13 DME categories that were removed from this round of the DMEPOS Competitive Bidding Program until the next Round of bidding.

Background

In 2018, CMS paused the DMEPOS Competitive Bidding Program (CBP) because of design flaws that caused unsustainable payment rates. CMS used the 2 year pause to redesign the program. Unfortunately, CMS maintained the previously flawed payment rates during the gap period that were established in 2016, which were 50-60% lower than the unadjusted Medicare fee schedule rates.

It was the DME industry's hope that when the CBP restarted in 2021, payment rates would increase. At the end of 2020, CMS decided to pull 13 of 15 categories out of the current CBP, since according to CMS, the program did not achieve expected savings. The only product categories that moved forward were back and knee braces, which were new to the CBP. CMS indicated that it would continue to use the old payment rates from the flawed program until the next round of bidding (new round is anticipated to start on January 1, 2024). The payment rates were low before the COVID-19 pandemic, but during the pandemic, these rates have become unsustainable. Unlike other industries, DME suppliers cannot pass on the additional costs to consumers.

CMS has the authority to increase CBP rates. In October of 2021, Representatives Cathy McMorris Rodgers and Paul Tonko spearheaded a Congressional sign-on letter asking HHS and CMS to adjust the rates. 95 members of Congress signed this letter. On December 22, 2021, CMS issued a DMEPOS final rule, which did not provide a payment adjustment for items that were removed from this round of CBP.

Intent/Summary of the Legislative Language

In the past, Congress and CMS have addressed low payment rates for Medicare DMEPOS items in non-CBAs by using a blended rate. In the 21st Century Cures Act, Congress provided for a 50/50 blended rate for all non-CBAs (50% competitive bidding rates/50% unadjusted Medicare fee schedule) for six months. This relief gave CMS time to use its authority to make payment adjustments. In a 2018 Interim Final Rule and the 2018 ESRD Rule, CMS established a 50/50 blended rate for rural, non-CBAs until 2020. In the 2020 CARES Act, Congress provided a 50/50 blended rate for rural areas and a 75/25 blended rate for non-rural, non-CBAs (75% competitive bid rates/25% unadjusted Medicare fee schedule rates) throughout the Public Health Emergency (PHE). On December 22, 2021, CMS issued a final rule that will continue the 50/50 blended rate for rural areas post-PHE.

On February 9, 2022, Representatives Markwayne Mullin and Paul Tonko introduced the DMEPOS Relief Act of 2022 (H.R. 6441) to address payment rates for DMEPOS items that were removed from this round of CBP. Other House members joining the bill as original cosponsors were Brian Fitzpatrick (R-Pa.), Fred Keller (R-Pa.) Frank Mrvan (D-Ind.), Tom Reed (R-N.Y.), and Terri Sewell (D-Ala.). The Mullin/Tonko legislative language is based on Congress and CMS' past use of blended rates for DMEPOS items. H.R. 6641 would establish a 90/10 blended rate (90% competitive bidding rates/10% unadjusted Medicare fee schedule rates) for the 13 DMEPOS categories that were removed from the current round of the DMEPOS CBP. This payment adjustment would only apply to the 13 categories in CBAs until the next CBP round, which is anticipated to start in 2024. The industry estimates that the 90/10 blended rate will result in an average 9% increase in payment rates.

Our Ask:

Congress must address out-of-date DMEPOS Medicare payment rates. Please support H.R. 6641 which would apply 90/10 blended rates until the next round of DMEPOS Competitive Bidding Program. Members of Congress interested in cosponsoring this important bill should reach out to Rep. Markwayne Mullin or Rep. Paul Tonko's office.

	Weighted Average % Change from 2022 Rates to 90/10 Blended Rates for All CBP items*:	9.3%			
	Estimated 2-Year \$ Increase **:	\$281,475,728.87			
				90/10 Rates Compared to CY2022 Rates	
Top HCPCS	HCPCS Description	Average 2015 Rate	Average 2022 Rate	Average 90/10 Blended Rate	Average % Rate Increase from 2022 to 90/10 Blended Rate
E1390 RR	Oxygen Concentrator, Single Delivery Port, Capable Of Delivering 85 Percent Or Greater Oxygen Concentration At The Prescribed Flow Rate	\$180.92	\$85.31	\$94.87	11.2%
E0431 RR	Portable Gaseous Oxygen System, Rental; Includes Portable Container, Regulator, Flowmeter, Humidifier, Cannula Or Mask, And Tubing	\$30.42	\$19.05	\$20.19	6.0%
E1392 RR	Portable Oxygen Concentrator, Rental	\$51.63	\$41.81	\$42.79	2.3%
E0443	Portable Oxygen Contents, Gaseous, 1 Month's Supply = 1 Unit	\$77.45	\$52.48	\$54.97	4.8%
K0738 RR	Portable Gaseous Oxygen System, Rental; Home Compressor Used To Fill Portable Oxygen Cylinders; Includes Portable Containers, Regulator, Flowmeter, Humidifier, Cannula Or Mask, And Tubing	\$51.63	\$41.81	\$41.80	0.0%
E0601 RR	Cont airway pressure device	\$101.73	\$44.41	\$50.14	12.9%
A7030 NU	Cpap full face mask	\$180.47	\$96.33	\$104.75	8.7%
A7031 NU	Replacement facemask interfa	\$66.75	\$36.70	\$39.71	8.2%
A7032 NU	Replacement nasal cushion	\$38.77	\$20.51	\$22.34	8.9%
A7034 NU	Nasal application device	\$112.53	\$60.29	\$65.51	8.7%
K0001 RR	Standard Wheelchair (1st Month)	\$57.15	\$24.88	\$28.10	13.0%
K0003 RR	Lightweight Wheelchair	\$93.73	\$37.09	\$42.75	15.3%
E1028 RR	Wheelchair Accessory, Manual Swingaway, Retractable Or Removable Mounting Hardware For Joystick, Other Control Interface Or Positioning Accessory	\$19.73	\$14.24	\$14.79	3.9%
E2611 NU	General Use Wheelchair Back Cushion, Width Less Than 22 Inches, Any Height, Including Any Type Mounting Hardware	\$298.48	\$165.07	\$178.41	8.1%
K0195 RR	Elevating Leg Rests, Pair (for Use With Capped Rental Wheelchair Base)	\$19.30	\$11.48	\$12.26	6.8%
E0260 RR	Hospital Bed, Semi-Electric (Head And Foot Adjustment), With Any Type Side Rails, With Mattress (1st Month)	\$134.38	\$65.82	\$72.68	10.4%
E0250 RR	Hospital Bed, Fixed Height, With Any Type Side Rails, With Mattress	\$88.76	\$69.75	\$71.65	2.7%
E0255 RR	Hospital Bed, Variable Height, Hi-Lo, With Any Type Side Rails, With Mattress	\$106.73	\$72.78	\$76.18	4.7%
E0261 RR	Hospital Bed, Semi-Electric (Head And Foot Adjustment), With Any Type Side Rails, Without Mattress	\$121.95	\$64.10	\$69.88	9.0%
E0303 RR	Hospital Bed, Heavy Duty, Extra Wide, With Weight Capacity Greater Than 350 Pounds, But Less Than Or Equal To 600 Pounds, With Any Type Side Rails, With Mattress	\$283.14	\$174.79	\$185.63	6.2%