



Related MLN Matters Article #: SE0807 **Revised**

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Important Exceptions and Special Circumstances that Occur under the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program: – The third in a series of articles on the new DMEPOS competitive bidding program

Key Words

SE0807, SE0805, SE0806, MM5978, MM6119, DMEPOS, DME, Competitive, Bidding

Provider Types Affected

Physicians and other treating practitioners who are Medicare enrolled DMEPOS suppliers; Physicians and others who order or refer DMEPOS items or services for their patients; Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs); and Physical therapists and occupational therapists in private practice who are Medicare enrolled DMEPOS suppliers

Note: Many Medicare Fee-for-Service providers may be in a position of ordering, referring, or supplying DMEPOS to a Medicare beneficiary. This includes physicians (including podiatric physicians), other treating practitioners (nurse practitioners, physician assistants, and clinical nurse specialists), physical and occupational therapists, and institutional providers (especially SNFs and their social workers or care coordinators, hospitals and their discharge planners, home health agencies, and pharmacists).

Note: MLN Matters article SE0807 was impacted by the Medicare Improvements for Patients and Providers Act of 2008, which was enacted on July 15, 2008. That legislation delays the implementation of the DMEPOS competitive bidding program until 2009 and makes other changes to the program. SE0807 will be further revised and/or replaced as more details of the modified program are available.

Key Points

- SE0807 is the third in a series of MLN Matter DMEPOS articles and provides information on some special circumstances and exceptions of particular interest to physicians and other treating practitioners, SNFs, NFs, and physical and occupational therapists in independent practice.
- In using this series of DMEPOS articles, providers should remember that in most instances, beneficiaries maintaining a permanent residence in one of the Competitive Bidding Areas (CBAs) must obtain competitive bidding items from a contract supplier. There are also program requirements that apply to beneficiaries who reside in CBAs but travel outside of those CBAs and to beneficiaries who do not live in CBAs but travel to them.

Note: The Competitive Bidding Program does not affect a patient's choice of physician or treating practitioner.

Physicians and Other Treating Practitioners Who are Enrolled DMEPOS Suppliers

- Medicare physicians and treating practitioners who have also enrolled as Medicare DMEPOS suppliers via the 855S enrollment form have the option to furnish certain types of competitively bid items to their own patients without submitting a bid or being awarded a competitive bid contract, provided the following requirements are met:
 - For the first phase of the program being implemented July 1 2008, the item furnished must be a walker. In the future, the items will be limited to crutches, canes, walkers, folding manual wheelchairs, blood glucose monitors, and infusion pumps that are DME;
 - The items must be furnished by the physician or treating practitioner DMEPOS supplier **to his or her own patients as part of his or her professional service;** and
 - The items must be billed to a DME Medicare Administrative Contractor using the DMEPOS billing number that is assigned to the physician, the treating practitioner (if possible), or a group practice to which the physician or treating practitioner has reassigned the right to receive Medicare payment.
- Where the furnished item is a bid item and the beneficiary resides in a CBA, the physician or treating practitioner will be paid the single payment amount established by this program for the item. This exception does not affect the applicability of the physician self-referral (Stark law) provisions in Section 1877 of the Act. All provisions of the physician self-referral law remain fully in effect.

Physicians and Other Treating Practitioners Who Provide Specific Brand or Mode of Delivery to Avoid an Adverse Medical Outcome

- A physician (including a podiatric physician) or treating practitioner may prescribe, in writing, a particular brand of DMEPOS bid item or mode of delivery for an item if he or she determines that the particular brand or mode of delivery would avoid an adverse medical outcome for the beneficiary.
- The physician or treating practitioner must document in the beneficiary's medical record the reason why the specific brand or mode of delivery is necessary to avoid an adverse medical outcome.
- In these cases, the contract supplier under the Competitive Bidding Program must:
 - Furnish the particular brand or mode of delivery as prescribed by the physician or treating practitioner;
 - Consult with the physician or treating practitioner to find another appropriate brand of item or mode of delivery for the beneficiary and obtain a revised written prescription from the physician or treating practitioner; or
 - Assist the beneficiary in locating a contract supplier that can furnish the particular brand of item or mode of delivery prescribed by the physician or treating practitioner.
- Any change in the prescription requires a revised written prescription. A contract supplier is prohibited from submitting a claim to Medicare if it furnishes an item different from that specified in the written prescription received from the beneficiary's physician or treating practitioner.

SNFs and NFs Specialty Suppliers

- The DMEPOS Competitive Bidding Program applies to SNFs and NFs to the extent that their residents receive competitively bid items under Medicare Part B.
- Unlike most suppliers, SNFs and NFs have the option to bid for, and be awarded contracts to be "specialty suppliers" that **only furnish competitively bid items to their own residents**.
- SNFs and NFs that become specialty suppliers may not furnish competitively bid items and services to Medicare beneficiaries outside their facilities for purposes of Medicare payment.
- SNFs and NFs **can also** become regular contract suppliers that furnish competitively bid items to beneficiaries throughout a CBA.
- If a SNF or NF is not a contract supplier (either a specialty contract supplier or a regular contract supplier), it must use a contract supplier for its CBA to furnish competitively bid items to its residents.

Physical Therapists and Occupational Therapists in Private Practice Who are Enrolled Medicare DMEPOS Suppliers

- Physical therapists and occupational therapists in private practice who are enrolled DMEPOS suppliers may eventually have the option to furnish certain types of competitively bid items to their own patients and be paid the single payment amount for such items without being contract suppliers, provided the following requirements are met:
 - The items are limited to off-the-shelf orthotics (OTS); and
 - The items must be furnished only to their own patients as part of the physical or occupational therapy service.

Note: OTS orthotics are not included in the first phase of competitive bidding, this exception is not relevant in the first phase of the DMEPOS Competitive Bidding program beginning July 1, 2008.

Important Links

The related MLN Matters article can be found at

<http://www.cms.hhs.gov/MLNMattersArticles/downloads/se0807.pdf> on the CMS website.

CMS has released a new Chapter 36 of the *Medicare Claims Processing Manual*. This chapter is contained in CR5978 and is amended by CR6119. It contains the initial, official manual instructions for this program.

The MLN Matters articles related to CR6119 is available at

<http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM6119.pdf> on the CMS website.

Other MLN Matter articles that may be of interest are:

- SE0805 ("Overview of New Medicare Competitive Bidding Program for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) – The first in a series of articles on the implementation of this program") at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0805.pdf>,
- SE0806 ("Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program: Grandfathering, Repair and Replacement, Mail Order Diabetic Supplies and

Advanced Beneficiary Notices (ABNs) – The second in a series of articles on the new DMEPOS competitive bidding program") at

<http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0806.pdf>, and

- MM5978 ("Phase 1 of Manual Revisions to Reflect Payment Changes for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Items as a Result of the DMEPOS Competitive Bidding Program and the Deficit Reduction Act of 2005") at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM5978.pdf> on the CMS website.

Providers can also visit <http://dmecompetitivebid.com/palmetto/cbic.nsf/DocsCat/Home> on the Internet and <http://www.cms.hhs.gov/DMEPOSCompetitiveBid/> on the CMS website for more details.

If providers have concerns, questions, or complaints about the quality of an item or the service that a patient received from a contract supplier, they can call the Competitive Bidding Program helpline at 1-877-577-5331.

For more information about the Competitive Bidding Program, providers can call 1-877-577-5331. TTY users can call 1-877-486-2048.