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MLN Matters Number: MM6007 **Revised**

Related Change Request (CR) #: 6007

Related CR Release Date: June 26, 2008

Effective Date: July 1, 2008

Related CR Transmittal #: R1544CP

Implementation Date: July 7, 2008

Manual Revisions to Reflect Special Billing Instructions for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Items as a Result of the DMEPOS Competitive Bidding Program

Note: This article is 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. This article will be further revised and/or replaced as more details of the modified program are available.

Provider Types Affected

Physicians, providers, and suppliers who bill Medicare Durable Medical Equipment Medicare Administrative Contractors (DME MACs) for DMEPOS provided to Medicare beneficiaries.

Provider Action Needed

The Centers for Medicare & Medicaid Services (CMS) issued Change Request (CR) 6007 so suppliers are aware of the information provided in the **new section**

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50 of chapter 36 of the Medicare Claims Processing Manual highlighted in the *Key Points* section of this CR and attached to CR6007.

Background

Change Request 6007 explains that currently Medicare payment for most DMEPOS is based on fee schedules. However, section 302(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), which amended section 1847 of the Social Security Act (Act), mandates a competitive bidding program to replace the current DMEPOS methodology. The statute also mandates that the competitive bidding program be phased-in beginning in 2007. CMS has issued the regulation for the competitive bidding program, which was published on April 10, 2007 (72 Federal Register 68 (10 April 2007) pp. 17991-18090).

Key Points of CR6007

- Claims for DMEPOS items subject to the DMEPOS Competitive Bidding Program should be submitted under the general DMEPOS claims billing guidelines specified in Chapter 20, section 110 of the Medicare Claims Processing Manual, which may be viewed by referring to <http://www.cms.hhs.gov/manuals/downloads/clm104c20.pdf> on the CMS website, **with the following exceptions as described below.**
- Under the DMEPOS Competitive Bidding Program, all claims should be submitted electronically (except for certain claims with multiple Medicare Secondary Payer situations, which may be sent via paper claims) and claims are subject to mandatory assignment. Mandatory assignment denotes that a supplier must accept Medicare payment as payment in full with the beneficiary's liability limited to any applicable deductible and 20 percent coinsurance.
- New modifiers will be in use for the DMEPOS Competitive Bidding Program and the following Table 1 below describes these modifiers.

Modifier	Effective Date	Definition
KG	7/1/07	DMEPOS Item Subject to DMEPOS Competitive Bidding Program Number 1
KK	7/1/07	DMEPOS Item Subject to DMEPOS Competitive Bidding Program Number 2
KU	7/1/07	DMEPOS Item Subject to DMEPOS Competitive Bidding Program

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Modifier	Effective Date	Definition
		Number 3
KL	7/1/07	DMEPOS Item Delivered Via Mail
KT	7/1/07	Beneficiary Resides in a Competitive Bidding Area and Travels Outside that Competitive Bidding Area and Receives a Competitive Bid Item
KV	1/1/08	DMEPOS Item Subject to DMEPOS Competitive Bidding Program that is Furnished as Part of a Professional Service
KW	1/1/08	DMEPOS Item Subject to DMEPOS Competitive Bidding Program Number 4
KY	1/1/08	DMEPOS Item Subject to DMEPOS Competitive Bidding Program Number 5

- New HCPCS modifiers were developed to facilitate implementation of various policies that apply to certain competitive bidding items. The KG, KK, KU, KW, and KY modifiers are pricing modifiers that suppliers must use to identify when the same supply or accessory HCPCS code is furnished in multiple competitive bidding product categories. For example, HCPCS code E0981 (Wheelchair Accessory, Seat Upholstery, Replacement Only, Each) is found in both the standard and complex rehabilitative power wheelchair competitive bidding product categories. Contract suppliers for the standard power wheelchair product category shall submit E0981 claims using the KG modifier, whereas contract suppliers for the complex rehabilitative power wheelchair product category shall use the KK modifier. All suppliers, including grandfathered suppliers, shall submit claims for competitive bid items using the aforementioned competitive bidding modifiers. The KG and KK modifiers are used in Round I of the competitive bidding program and the KU, KW and KY modifiers are reserved for future program use.
- Claims for non-mail order competitive bid items furnished to beneficiaries who maintain a permanent residence in a CBA, but who are traveling outside of their CBA when they obtain the item, must be submitted with a "KT" modifier to indicate a traveling beneficiary. **Claims for items subject to national competitive bidding (NCB) furnished to beneficiaries traveling outside of their CBA that do not have a "KT" modifier will be denied.** Jurisdiction for these claims remains with DME MAC with jurisdiction for the beneficiary based on the beneficiary's permanent residence. Claims for mail order competitively bid items that have the "KT" modifier will be denied.
- For purposes of claims adjudication under DMEPOS Competitive Bidding, **beneficiaries who are maintain a permanent residence within a CBA and, while a resident of a**

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skilled nursing facility (SNF) or nursing facility (NF) facility outside of a CBA, obtain a competitively bid item from that SNF or NF, will be treated as traveling beneficiaries when their permanent address is within a CBA. Suppliers should submit a “KT” modifier on any claims for DMEPOS items provided to beneficiaries while in a SNF or a NF, under these circumstances. For all such claims, suppliers should submit the claim using place of service “31” to indicate that the beneficiary resides in a SNF or “32” to indicate that the beneficiary resides in a nursing home, as applicable.

- **The “KL” modifier has been established for use for mail order DMEPOS Competitive Bidding items (e.g. diabetic supplies).** Beneficiaries who maintain a permanent residence in CBAs that include mail order for diabetic supplies may choose to obtain their diabetic supplies through mail order or at a storefront. If such a beneficiary chooses to obtain their diabetic supplies through mail order, they should obtain these supplies from a contract supplier for mail order items in their CBA. Claims for mail order diabetic supplies provided to beneficiaries who maintain a permanent residence in a CBA should be billed with the modifier “KL”.
- **Under DMEPOS Competitive Bidding, physicians and treating practitioners may furnish certain competitively bid items without submitting a bid and being awarded a contract.** This exception requires that the items be furnished by the physician or treating practitioner to his or her own patients as part of his or her professional service. The professional service must be furnished on the same date as the date that the DME item is initially furnished. In addition, physicians and treating practitioners must submit their office visit claim on the same day that they submit the DME claim to ensure timely and accurate claims processing. Physicians and treating practitioners who provide DME items in their offices should continue to be paid even though they did not submit or win a bid for the items. Physicians and treating practitioners that are located in a CBA should submit the “KV” modifier on claims for DME items and related accessories that are appropriately furnished in accordance with this exception to receive payment for these items at the contracted bid amount for the applicable CBA. **Physician/practitioner-submitted claims for competitively bid items that do not have an accompanying office visit will be denied.** Physicians and practitioners located outside a CBA who furnish DME items and/or related accessories as part of a professional service to traveling beneficiaries who maintain a permanent residence in a CBA must also affix the “KV” modifier to claims submitted for these items.
- **Non-contract suppliers of oxygen and oxygen equipment may elect to become “grandfathered suppliers” and continue to provide these items and services to their existing beneficiaries, if the beneficiary agrees to the arrangement.** These suppliers are considered “grandfathered” and the grandfathering process only applies to suppliers that began furnishing the oxygen and oxygen equipment to beneficiaries in a CBA prior to the implementation of the competitive bidding program for that area and chooses to continue to furnish the grandfathered oxygen equipment to beneficiaries in the CBA. If a

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non-contract supplier does not want to continue furnishing oxygen and oxygen equipment to its existing customers/beneficiaries, the beneficiaries must use a contract supplier to obtain the oxygen and oxygen equipment. Ordinarily, the title to the oxygen equipment would transfer to the beneficiary after rental payments have been made for 36 months of continuous use. However, Medicare allows for a minimum of 10 months of payments to be made to a contract supplier for oxygen and oxygen equipment furnished to a beneficiary who changes suppliers under the DMEPOS Competitive Bidding Program because the current supplier chose not to become a grandfathered supplier. Therefore, under the DMEPOS Competitive Bidding Program, up to 45 continuous payments could be made for the oxygen and oxygen equipment. The beneficiary is liable for co-payments for all paid oxygen and oxygen equipment claims.

- **Non-contract suppliers of capped rental equipment may elect to become “grandfathered suppliers” and continue to provide their equipment to their existing beneficiaries, if the beneficiary agrees to the arrangement.** This grandfathering process only applies to suppliers that began furnishing the capped rental item to beneficiaries in a CBA prior to the implementation of the competitive bidding program for that area and chooses to continue to furnish the grandfathered item to beneficiaries in the CBA. The payment for these services will be made at the fee schedule amount. If a non-winning supplier does not want to continue providing capped rental equipment to its existing beneficiaries at the bid amount (chooses not to become a “grandfathered supplier” under DMEPOS Competitive Bidding), the beneficiary should obtain a new piece of capped rental equipment from a winning supplier. Under normal circumstances, the title to the capped rental item would transfer to the beneficiary after 13 payments have been made. However, for beneficiaries that should obtain a new piece of equipment under DMEPOS Competitive Bidding, the 13 month capped rental period starts over again. Medicare allows for a minimum of 13 months of payments to be made to a winning supplier for capped rental items provided to a beneficiary who should change suppliers under DMEPOS Competitive Bidding because their current supplier chooses not to become a grandfathered supplier. Therefore, under DMEPOS Competitive Bidding, up to 25 payments could be made for the capped rental item. The beneficiary is liable for co-payments for capped rental equipment claims for up to 25 months, regardless of when the title transferred.
- Suppliers are not required to obtain a new Certificate of Medical Necessity (CMN) for situations in which a beneficiary who was receiving a capped rental item prior to the implementation of DMEPOS Competitive Bidding goes to a new supplier after the implementation of NCB (e.g., the previous supplier decides not to become a grandfathered supplier), unless the beneficiary’s medical necessity for the item has changed. Notwithstanding this situation, the **new supplier should bill using the appropriate modifiers for their first rental month (KH), the second and third rental months (KI), and all subsequent rental months (KJ).**

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Additional Information

For complete details regarding this CR please see the official instruction (CR6007) issued to your Medicare DME MAC. That instruction may be viewed by going to <http://www.cms.hhs.gov/Transmittals/downloads/R1544CP.pdf> on the CMS website. The new manual sections are attached to CR6007. You may also wish to DMEPOS Competitive Bidding Web Page, which contains a wide array of resources relating to this program. That page is at <http://www.cms.hhs.gov/DMEPOSCompetitiveBid> on the CMS website.

If you have questions, please contact your Medicare DME MAC at their toll-free number which may be found at <http://www.cms.hhs.gov/MLNProducts/downloads/CallCenterTollNumDirectory.zip> on the CMS website.

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