

Congress Must Act to Protect Access for People with Disabilities—Support H.R. 1361 & S. 486

Issue

The Centers for Medicare and Medicaid Services (CMS) began applying Competitive Bid Program (CBP) pricing to Complex Rehab manual wheelchair accessories on January 1, 2016 and will begin applying CBP pricing to Complex Rehab power wheelchair accessories on July 1, 2017 after two statutory delays by Congress (a one year statutory delay by Congress via S 2425 Patient Access & Medicare Protection Act of 2015 and an additional 6 month delay by 21st Century CURES Act).

Implementing these prices violate the intent of past Congressional legislation and will create significant access problems for Medicare beneficiaries and other people with disabilities. CMS has refused a formal Congressional request to rescind this policy; therefore, Congress must pass clarifying legislation to accomplish this because:

- **It violates Congressional intent.** CMS' policy violates Congress' intent when it passed legislation requiring CMS to exempt Complex Rehab power wheelchairs and accessories from the CBP through the Medicare Improvements for Patients and Providers Act of 2008.
- **It conflicts with Medicare policies.** It is contrary to current Medicare policies created by CMS following the legislation which stipulate that accessories used on Complex Rehab manual and power wheelchairs are to be paid at traditional fee schedule amounts.
- **It is based off pricing of dissimilar items.** CMS is using information obtained through the bidding of accessories used on Standard wheelchairs and inappropriately applying that pricing to Complex Rehab accessories that were not part of the CBP. CMS elected to group heterogeneous products under the same HCPCS codes; as result, the same codes includes both Standard and Complex Rehab wheelchair accessories. Those products are fundamentally different, and bidding suppliers did not consider Complex Rehab accessories when submitting their bids as Complex Rehab wheelchairs and related accessories were not part of the CBP.
- **It is based off old, limited pricing information.** CMS is using extremely limited information from a sample size of 174 power wheelchairs in nine cities in 2008. Moreover, the CBP worksheet provided to suppliers indicated usage for many of the accessories between only 1 unit and 5 units per year. CMS plans to apply this grossly inadequate, 9 year old data to Complex Rehab accessories used on a national universe of over 15,000 Complex Rehab power wheelchairs.
- **It detrimentally affects the disabled population.** The negative consequences will not be limited to just the Medicare program but will extend to children and adults with disabilities covered by Medicaid and other health insurance plans since most other payers follow Medicare policies.

Background

Complex Rehab wheelchairs and related accessories are used by a small population of people with high levels of disabilities such as ALS, cerebral palsy, multiple sclerosis, muscular dystrophy, spinal cord injury, and traumatic brain injury. Within the Medicare program, these individuals represent a small but very vulnerable group of people with significant disabilities and account for less than 10% of all Medicare beneficiaries who use wheelchairs. The specialized equipment is provided through a clinical team model and requires evaluation, configuration, fitting, adjustment, and/or programming. This small population has the highest level of disabilities and requires these individually configured Complex Rehab wheelchairs and critical related accessories to meet their medical needs and maximize their function and independence.

In November 2014, CMS issued Final Rule CMS 1614-F, which contains provisions relating to Medicare's Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) benefit. These provisions detail how CMS will use information obtained through the Medicare CBP to adjust the Medicare Fee Schedule for Competitively Bid (CB) items provided in non-bid areas. In December 2014, CMS issued a "Frequently Asked Questions" document that states

starting in 2016 it will use CB pricing information obtained from bids for Standard wheelchair accessories to reduce payment amounts for critical Complex Rehab wheelchair accessories (such as seat/back cushions, tilt/recline systems, and specialty controls). The payment changes were scheduled to go into effect January 1, 2016. Congress intervened in December of 2015 (via S. 2425) and again in December of 2016 (via H.R. 34) to delay this payment change for Group III power Complex Rehab wheelchair accessories due to concerns about the impact the price adjustment would have on beneficiaries needing this specialized, complex equipment.

CMS' policy change impacts 171 wheelchair accessory codes. The annual Medicare spend on the Complex Rehab wheelchair accessories within these codes is estimated at \$123 million. The annual payment reductions to these Complex Rehab wheelchair accessories are estimated at \$20 million. The lower rates do not reflect the actual costs to provide these products, and such reductions to these accessories will deny access to critical Complex Rehab wheelchairs needed by Medicare beneficiaries with disabilities.

Wheelchair accessories grouped under the same HCPCS code are very different and meet the needs of a different population of users. The accessories used with Complex Rehab wheelchairs have either not been included in the CBP at all, or the inclusion was so small that the data is insufficient to be reasonably used to adjust the national fee schedule.

Solution

On March 1, 2017, Senators Bob Casey (D—PA) and Rob Portman (R—OH) introduced S 486, which clarifies Congress' intent to exempt all Complex Rehab wheelchairs and accessories from the application of CB rates; House companion legislation, H.R. 1361, was introduced by Congressmen Lee Zeldin (R—NY) and John Larson (D—CT) on March 2, 2017.

Our Ask:

In order to protect access to this Complex Rehab equipment for Medicare beneficiaries and other people with disabilities, AAHomecare strongly urges Members of Congress to support S. 486 and H.R. 1361 and work for its passage by contacting lead sponsors for their respective bill and agreeing to co-sponsor this important legislation.