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CMS Issues CY 2020 DMEPOS Final Rule

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On November 8, 2019, the Centers for Medicare and Medicaid Services (CMS) published changes to the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) fee schedule for calendar year (CY) 2020. Such changes include establishing a gap-filling methodology to determine DMEPOS prices; subjecting a Master List of DMEPOS items to prior authorization, face-to-face encounter requirements, and written order requirements; and streamlining DMEPOS order requirements. This article briefly overviews the DMEPOS fee schedule history, then summarizes CMS' CY 2020 updates and associated practical implications.

Background of DMEPOS Rule

Social Security Act § 1834(a) mandates payment amounts for DMEPOS items and services[1] based on a fee schedule of average reasonable charges.[2] Medicare pays 80% for the lesser of the actual charge for a DMEPOS item, or the fee schedule amount of the item, less any unmet Medicare Part B deductible.[3] CMS increases the DMEPOS fee schedule amounts annually by the percentage increase in the consumer price index from the previous 12 months ending June 30, reduced by a productivity adjustment.[4]

DMEPOS Updates in CY 2020 Final Rule

CMS establishes a gap-filling methodology for the pricing of new DMEPOS items and services

CMS adds 42 C.F.R. § 414.110 to address the continuity of pricing when HCPCS codes are divided or combined.[5] CMS or Medicare Administrative Contractors (MACs) will make every effort to crosswalk the fee schedule pricing for old HCPCS codes to new HCPCS codes.[6] If a new HCPCS code does not have a fee schedule pricing history, CMS would establish fees using comparable items with existing fee schedule amounts.[7]

CMS also codifies at 42 C.F.R. § 414.238 determining the fee schedule amounts for a new item based on commercial pricing data, such as retail prices or information from supplier invoices deflated to the fee schedule base period.[8]

CMS finalizes a one-time adjustment to the gap-filled fee schedule amounts in cases where prices decrease by less than 15% within five years of the initial fee schedule amounts by using new prices.[9]

CMS did not finalize at this time a process for using technology assessments to establish fee schedule amounts for new DMEPOS items.[10]

CMS streamlines requirements for ordering DMEPOS items

CMS finalizes that the DMEPOS Conditions of Payment at 42 C.F.R. § 410.38(d), including requirements for written prescriptions, face-to-face encounters, and other documentation, apply to items specified under 42 C.F.R. § 410.36(a), including medical supplies, appliances, and devices.[11]

CMS replaces obsolete DMEPOS language, including "iron lungs" and "oxygen tents," at 42 C.F.R. § 410.38(a) with new language, including "ventilators" and "oxygen equipment."[12] CMS also revised other definitions in 42 C.F.R. § 410.38, such as definitions for treating practitioners, physicians, DMEPOS suppliers, written orders / prescriptions, face-to-face encounters, Power Mobility Devices, and others.[13]

CMS specifies criteria for items subject to prior authorization, face-to-face encounter requirements, and written order requirements in a "Master List"

CMS finalizes inclusion of the following items in the Master List (found at Table 13 in the Final Rule):[14] DMEPOS items that have an average purchase fee of $500 or greater, an average monthly rental fee schedule of $50 or greater, or account for at least 1.5% of Medicare expenditures; DMEPOS items that have a high rate of potential fraud or unnecessary utilization as identified in an Office of Inspector General or Government Accountability Office report; DMEPOS items that have a high improper payment rate; DMEPOS items that have at least 1,000 claims and $1 million in payments during a recent 12-month period without aberrant billing patterns; and any DMEPOS items statutorily requiring a face-to-face encounter, a written order prior to delivery, or prior authorization.[15]

CMS will publish items from the Master List that are also on the "Required Face-to-Face Encounter and Written Order Prior to Delivery" List on the CMS website and the *Federal Register* 60 days prior to effectiveness.[16]

CMS creates a list of DMEPOS items that require prior authorization and will post to the CMS website.[17]

CMS creates a standard set of written order / prescription requirements, including: beneficiary name or Medicare Beneficiary Identifier; description of the item; quantity to be dispensed; order date; treating practitioner name or National Provider Identifier; and treating practitioner signature.[18] CMS believes "streamlining [its] requirements furthers

[its] efforts to reduce waste, fraud, and abuse by promoting a better understanding of [its] conditions of payment, which may result in increased compliance."[19]

CMS removes the 60-day advance requirement for DMEPOS suppliers to notify CMS of a change in ownership (CHOW).[20] Instead, CMS now requires notification no later than ten days after the effective date of a CHOW.[21]

CMS solicited and will consider comments in devising a method to determine the volume of diabetic testing strips which CMS may later use to evaluate bidders in the national mail order Competitive Bidding Program for diabetic testing supplies.[22]

Practical Takeaways

DMEPOS providers can take advantage of CMS' new payment opportunities and evaluate CMS' new payment requirements, including:

- Ensuring compliance with prior authorization requirements found in the Master List of DMEPOS items in Table 13 of the Final Rule; and
- Evaluating CMS' use of gap-filling methodologies to ensure reasonable estimates of new pricing for DMEPOS services.

Providers may also consider submitting comments to CMS regarding its proposed future DMEPOS policies, such as a process for using technology assessments to establish fee schedule amounts for new DMEPOS items, or a methodology to determine the volume of diabetic testing strips as part of the national mail order Competitive Bidding Program for diabetic testing supplies.

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[1] 84 Fed. Reg. 60648, 60729 (Nov. 8, 2019).
[2] 84 Fed. Reg. 60648, 60730 (Nov. 8, 2019); 42 C.F.R. § 405.502.
[3] 84 Fed. Reg. 60648, 60730 (Nov. 8, 2019).
[4] 84 Fed. Reg. 60648, 60730 (Nov. 8, 2019).
[5] 84 Fed. Reg. 60648, 60738 (Nov. 8, 2019).
[6] 84 Fed. Reg. 60648, 60738 (Nov. 8, 2019).
[7] 84 Fed. Reg. 60648, 60739 (Nov. 8, 2019).
[8] 84 Fed. Reg. 60648, 60734-35; 60808 (Nov. 8, 2019).
[9] 84 Fed. Reg. 60648, 60788 (Nov. 8, 2019).
[10] 84 Fed. Reg. 60648, 60742 (Nov. 8, 2019).
[11] 84 Fed. Reg. 60648, 60743 (Nov. 8, 2019).
[12] 84 Fed. Reg. 60648, 60745 (Nov. 8, 2019).
[13] 84 Fed. Reg. 60648, 60745 (Nov. 8, 2019).
[14] 84 Fed. Reg. 60648, 60756 (Nov. 8, 2019).
[15] 84 Fed. Reg. 60648, 60746-47 (Nov. 8, 2019).
[16] 84 Fed. Reg. 60648, 60751 (Nov. 8, 2019).
[17] 84 Fed. Reg. 60648, 60751 (Nov. 8, 2019).
[18] 84 Fed. Reg. 60648, 60753; 60802 (Nov. 8, 2019).
[19] 84 Fed. Reg. 60648, 60744 (Nov. 8, 2019).
[20] 84 Fed. Reg. 60648, 60778 (Nov. 8, 2019) (to be codified at 42 C.F.R. § 414.422).
[21] 84 Fed. Reg. 60648, 60777 (Nov. 8, 2019) (to be codified at 42 C.F.R. § 414.422).
[22] 84 Fed. Reg. 60648, 60785 (Nov. 8, 2019).