



## **Congressional Technical Correction Necessary to Clarify Exemption of Complex Rehab Wheelchair Accessories from Medicare Competitive Bidding**

Congress Must Act To Protect Access for People with Disabilities

### **Issue**

The Centers for Medicare and Medicaid Services (CMS) has announced that it will apply Competitive Bid Program (CBP) pricing to Complex Rehab wheelchair accessories effective January 1, 2016. This violates 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:

- CMS' policy violates Congress' intent when it passed legislation (the Medicare Improvements for Patients and Providers Act of 2008) requiring CMS to exempt Complex Rehab power wheelchairs and accessories from the CBP.
- It is contrary to current Medicare policies created by CMS following the legislation which stipulates that accessories used on Complex Rehab manual and power wheelchairs are to be paid at traditional fee schedule amounts.
- 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 has elected to group heterogeneous products under the same HCPCS codes and as a result the same code includes both Standard wheelchair accessories and Complex Rehab wheelchair accessories. These products are 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.
- CMS is using extremely limited information from a sample size of 174 power wheelchairs in nine cities. Moreover, the 2008 CBP bid 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, 7 year old data to Complex Rehab accessories used on a national universe of over 15,000 Complex Rehab power wheelchairs.
- 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 level 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 (less than 10% of all Medicare beneficiaries who use wheelchairs) but very vulnerable group of people with significant disabilities. The specialized equipment is provided through a clinical team model and requires evaluation, configuration, fitting, adjustment, or programming. This small population has the highest level of disabilities and require these individually configured Complex Rehab wheelchairs and critical related accessories to meet their medical needs and maximize their function and independence.

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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 Competitive Bid Program to adjust the Medicare Fee Schedule for Competitively Bid (CB) items provided in non-bid areas. The payment changes will go into effect January 1, 2016.

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 the payment amounts for critical Complex Rehab wheelchair accessories (such as seat/back cushions, recline/tilt systems, specialty controls). This policy change created the issues and violations described above.

This policy change impacts 171 wheelchair accessory codes. The annual Medicare spend on the Complex Rehab wheelchairs accessories within these codes is estimated at \$123 million. The annual payment reductions to these Complex Rehab wheelchair accessories is 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 reasonably be used to adjust the national fee schedule.

On April 20<sup>th</sup> the House of Representatives sent a 101 signature bipartisan letter to CMS led by Representatives Bill Johnson (R-OH), Diana DeGette (D-CO), Mike Kelly (R-PA), John Larson (D-CT), Devin Nunes (R-CA), and Dave Loebsack (D-IA). The letter requested that “CMS issue written clarification that accessories used with complex rehabilitative power and manual wheelchairs will continue to be paid at Medicare established fee schedule amounts and that such amounts will not be adjusted based on Medicare competitive bidding program pricing.”

CMS has formally responded to the House letter stating that it does not intend to change its policy nor follow the Congressional recommendation.

### **Needed Congressional Action**

In order to protect access to this Complex Rehab equipment for Medicare beneficiaries and other people with disabilities Congress needs to legislate a technical correction to clarify that CMS cannot apply Competitive Bid Program pricing information to accessories used with Complex Rehab power and manual wheelchairs to prevent CMS’ application of these payment reductions scheduled for January 1, 2016.

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*The National Coalition for Assistive and Rehab Technology (NCART) works to ensure individuals with disabilities have adequate access to Complex Rehab Technology and supporting services. For additional information visit [www.ncart.us](http://www.ncart.us) or contact [info@ncart.us](mailto:info@ncart.us).*