



## Insight

# The 2024 Outlook for CMS' Durable Medical Equipment Competitive Bidding Program

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## Executive Summary

- Started in 2011, Medicare Part B's Durable Medical Equipment (DME), Prosthetics, Orthotics, and Supplies Competitive Bidding Program has saved \$3.1 billion from 2010 to 2015 by making vendors compete on specific products to supply Medicare beneficiaries.
- After a substantial pause in the program connected to the COVID-19 pandemic, the Centers for Medicare and Medicaid Services has yet to set a specific timeline for the next round of bidding starting in 2024, prompting some to wonder if the program will indeed return to its pre-pandemic scope.
- Prolonging the pause of competitive bidding for most DME categories may result in unnecessary Part B cost increases.

## Introduction

The Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) was established by the [Medicare Prescription Drug, Improvement, and Modernization Act of 2003](#), but was not implemented until 2011. Its purpose is to shift away from Medicare Part B paying medical equipment suppliers based on an antiquated and often inflated fee schedule and instead allow vendors to bid for contracts to supply certain categories of goods to Medicare beneficiaries. The most recent round of [DMEPOS CBP](#) under [Medicare Part B](#) will conclude on December 31, 2023.<sup>[i]</sup> For this round, the Centers for Medicare and Medicaid Services (CMS) organized bidding for 16 product categories in 130 competitive bid areas (CBAs). One in every four Medicare beneficiaries used durable medical equipment in 2009.<sup>[ii]</sup>

The COVID-19 pandemic limited the number of products CMS would move forward with the bidding process with the exception of two categories: off-the-shelf back braces and off-the-shelf knee braces, with an expected \$600 million in savings.<sup>[iii]</sup> CMS did not [anticipate any savings](#) in the 13 other product categories, perhaps due to concerns that contract suppliers made higher bids based on pandemic-related uncertainty.<sup>[iv]</sup>

The timeline for the next bid round of DMEPOS CBP remains unclear and has led to speculation that CMS may not resume bidding in all 16 categories or more in 2024 as expected. In May, CMS provided payment guidance for the upcoming temporary gap period without specifying any firm dates.<sup>[v]</sup>

Evidence reported from the earlier rounds demonstrated a significant decrease in spending for certain eligible products without impacting beneficiaries' access or use,<sup>[vi]</sup> pointing to the power of market competition to reduce Medicare costs. For example, Medicare experienced a reduction in spending for CBP-included products from \$7.5 billion to \$4.4 billion from 2010 to 2015 – a 42 percent saving. Over the same period, Medicare total spending on non-CBP-bided products grew \$3.3 billion to \$4 billion – a 23 percent growth.<sup>[vii]</sup>

## **What Is DEMPOS CBP?**

The Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Competitive Bidding Program was established by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 but implementation was delayed by the [Medicare Improvements for Patients and Providers Act of 2008](#). Competitive bidding commenced with the highest-cost products in 2011 followed by an expanded round in 2013. Subsequently, DEMPOS CBP was suspended for a period to allow CMS to implement certain reforms. In July 2016, a recompetete bid occurred for seven product categories as well as for specific diabetes testing supplies under the National Mail-Order Program. Both recompetetes ended on December 31, 2018.<sup>[viii]</sup> The most recent round started in January 2021 with an expected end date of December 31, 2023.

The next round of DMEPOS CBP is expected to take place in 2024 after CMS implements specific changes, which include establishing sustainable prices and preventing fraud, waste, and abuse – while saving money to the Medicare program without reducing patient access to quality items and services.<sup>[ix]</sup> Once these changes are adopted, CMS will begin the formal public notice and comment rulemaking process.

## **How Does It Work?**

Medicare pays for DMEPOS products either through a set fee schedule or the CBP. For products under the CBP, suppliers can offer prices at or below the administrative fee schedule, with Medicare awarding contracts to a variety of suppliers to meet the target quantity for that product. Medicare pays the selected suppliers the median of the winning bids. Notably, these bids are not binding, and the winning supplier can reject a contract. All non-CBP products are reimbursed via the fee schedule.

Prior to 2011, CMS paid for all DMEPOS products via fee schedule determined by supplier charges set from July 1986 to June 1987.<sup>[x]</sup> For products offered after this period, CMS used unadjusted list prices for products. This fee schedule, which was not updated to reflect changes in technology or the market, may have caused CMS to overpay for certain products. For example, the Department of Health and Human Services Office of the Inspector General [found](#) that “Medicare will allow \$7,215 for 36 months for [oxygen] concentrators that cost \$587, on average, to purchase.” These overpayments likely incentivized inappropriate utilization.<sup>[xi]</sup>

CMS [found](#) that DMEPOS had a 46.3 percent improper payment rate compared to 11.7 percent for the overall Part B program and 9.7 percent for Part A in 2016.<sup>[xii]</sup> Furthermore, MedPAC [published](#) data that compared Medicare's payment rate and private-payer rates for the top 10 highest expenditure non-CBP products in 2015. For nine out of the 10 products, MedPAC found that Medicare's median payment rate was 18 percent to 57 percent higher than the median of the private-payer rates.

## **What Do Original Medicare Beneficiaries Pay?**

A DMEPOS CBP contract supplier may only charge a Medicare beneficiary [20 percent coinsurance and any unmet yearly deductible](#).

### **What Items Are Currently Eligible?**

For a portion of the DMEPOS CBP (January 1, 2021, to December 31, 2023), only off-the-shelf back braces and off-the-shelf knee braces provided by [contract suppliers](#) in specific [CBAs](#) are eligible.

MedPAC [explained](#) that CMS typically “included a broad range of products in the CBP, including items such as power wheelchairs, walkers, diabetes testing supplies, continuous positive airway pressure devices, and oxygen equipment” in 2018. It is likely that the next round of CBP will include a larger number of products once it is announced.

### **What Was the result?**

Medicare experienced both a [decline](#) in price as well as quantity for CBP products included in earlier CBP rounds. Yet the reduction in supply did not meaningfully reduce access for clinically appropriate patients. The National Bureau of Economic Research (NBER) [concluded](#) after reviewing the price reductions for DME products in the CBP that “market forces could be a powerful instrument to reduce the high cost of health care in the U.S. generally and in the Medicare program specifically.” Additionally, prices in the private-payer market may fall as these payers use Medicare as a benchmark for pricing generally.

Finding similar results as NBER, MedPAC [suggested](#) that CMS’ authority should be expanded to allow the agency to include more products in the CBP to generate substantial savings for Medicare.

### **What Are the challenges?**

Some have [argued](#) that suppliers bid artificially low to ensure inclusion and receive a contract above their original offer. This “race to the bottom” CBP bid process could incentivize suppliers to offer lower quality products or inadvertently cause supply shortages.

### **Conclusion**

Earlier DMEPOS CBP rounds have successfully demonstrated the power of market competition to meaningfully reduce Medicare costs. For the next round of bidding to begin, CMS is expected to complete an internal review before commencing the formal notice and comment rule making process. This internal review should be swift to minimize the length of the temporary gap period.

Policymakers should consider how competitive bidding in other areas of Medicare could reduce costs and maintain quality, allowing private entities to offer their best price rather than limiting market competition, either through price controls or artificially high fee schedules.

[i] According to Medicare, DMEPOS CBP only applies to [original Medicare](#) and not Medicare Advantage plans.

[ii] Yunan Ji “[Can Competitive Bidding Work in Health Care? Evidence from Medicare Durable Medical Equipment](#)” Harvard Scholar, 2023. From analyzing claims the data, the author found that in 2009 durable medical equipment “...is used by 26 percent of Medicare beneficiaries annually, more than the share of

beneficiaries using acute care (17.7 percent) and post-acute care services (4.6 percent) combined.”

[iii] American Orthotic & Prosthetic Association “[Competitive Bidding Round 2021](#).” The association notes that “Medicare competitive bidding of OTS orthoses is limited to 16 spinal orthosis codes (L0650, L0450, L0455, L0457, L0467, L0469, L0621, L0623, L0625, L0628, L0641, L0642, L0643, L0648, L0649, and L0651) and 7 knee orthosis codes (L1833, L1812, L1830, L1836, L1850, L1851, and L1852). Competitive Bidding Round 2021 initially included all DMEPOS product categories previously included in Medicare competitive bidding as well as the 23 OTS orthosis codes not previously included in competitive bidding.”

[iv] David Kopf “[Playing the Waiting Game](#)” HME Business Management Solutions, February 2023. Kopf notes that “Way back in October 2020, when the nation was reeling with some of the worst of the Covid-19, the Centers for Medicare and Medicaid Services made two announcements that seemed particularly well-timed for their near-Halloween announcement dates: The first was the eyebrow-raising decision to forego awarding contracts for 13 categories of Round 2021 of its competitive bidding program. The second was that it released a proposed rule on DMEPOS payment policy. While the decision to essentially punt most of Round 2021 set tongues wagging, the proposed rule was of equal import, given that it addressed reimbursement.”

[v] CMS [states](#) that “Adjusted fees in former competitive bidding areas (CBAs) are based on 100 percent of the single payment amount for the CBA increased by the projected percentage change in the Consumer Price Index for All

Urban Consumers (CPI-U) from January 2023 – January 2024. Adjusted fees in non-CBAs are based on fully adjusted rates per the applicable methodology under 42 CFR 414.210(g).”

[vi] For specific CBP bided products, MedPac [found](#) that for mail-order diabetes testing supplies from 2010-2017, CMS experienced “Among the 25 highest expenditure products in 2017, median payment rate decline was nearly 50 percent” following DEMPOS CBP.

[vii] MedPac “[Report to Congress: Medicare and the Health Care Delivery System](#)” 2018, p. 137. The author acknowledges that the data period MedPac reviewed includes data prior to the implementation of the first CBP in 2010. MedPac explains that “For example, between 2010 and 2015, Medicare expenditures on diabetes testing supplies (e.g., blood glucose test strips) fell from \$1.6 billion to \$0.3 billion, a decrease of 79 percent. Over the same time period, Medicare expenditures on DMEPOS products not included in the CBP continued to increase. Between 2010 and 2015, expenditures for these products grew from \$3.3 billion to \$4.0 billion, a total increase of 23 percent. Because of the decrease in spending on CBP products and the increase in spending on non-CBP products, the share of total Medicare DMEPOS spending attributable to non-CBP products has increased rapidly. In 2010, non-CBP products represented about 30 percent of Medicare DMEPOS spending; by 2015, non-CBP products accounted for nearly half (48 percent) of all spending.”

[viii] Ibid, please see page 140 for additional information.

[ix] CMS [explained](#) that to prior to the next DMEPOS CBP Round the agency must implement specific changes to the program including: establishing sustainable prices, saving money for Medicare patients and taxpayers, limiting fraud, waste and abuse in the Medicare Program and ensuring patient access to quality items and services. Once these objectives are reviewed and the appropriate changes made to DMEPOS CBP, CMS will begin the next round via formal public notice and comment rulemaking process. No firm deadline or timeframe has been provided by CMS as of September 2023.

[x] CMS “Medicare Program; Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Policy Issues, and Level II of the Healthcare Common Procedure Coding System (HCPCS); DME Interim Pricing in the CARES Act; Durable Medical Equipment Fee Schedule Adjustments to Resume the Transitional 50/50 Blended Rates To

Provide Relief in Rural Areas and Non-Contiguous Areas” [Final Rule](#), 2021. The term “routinely purchased equipment” is defined in regulations at 42 CFR 414.220(a)(2) as equipment that was acquired by purchase on a national basis at least 75 percent of the time during the period July 1986 through June 1987.

[xi] MedPac “[Report to Congress: Medicare and the Health Care Delivery System](#)” 2018.

[xii] Improper payment does not necessarily mean a fraudulent payment. Moreover, for DEMPOS products, CMS [found](#) that “Insufficient documentation errors caused the vast majority (80.4 percent) of improper payments for DMEPOS. In these cases, the supplier or provider did not submit a complete medical record, or the record did not adequately support the supplies or services billed. Other insufficient 30 documentation errors were identified when the medical record lacked the required documentation elements such as a documented face-to-face physician evaluation within a specified timeframe, proof of delivery or a physician signature on a supplier form.”