Congress Must Act to Protect Patient Access to Home Oxygen Therapy in Rural America—Support HR 4229

Issue

The Centers for Medicare and Medicaid Services (CMS) applied a budget neutrality "offset" to the 2017 rural fee schedules for stationary oxygen equipment. The result is that the 2017 payment rates for oxygen concentrators, HCPCS E1390, in rural areas are now well below the regional competitive bidding rates from which they were derived. CMS applied an outdated regulation that was never intended to apply to rates derived from Competitive Bidding rates, which has resulted in unstainable oxygen reimbursement rates in rural areas. While there are a number of legal opinions to the contrary of CMS' position, it appears that Congress needs to act quickly and pass legislation to protect Medicare oxygen patients.

Background

In 1997, Congress included in the Balanced Budget Act a provision that authorized CMS to pay for oxygen based on "classes", as long as the result was budget neutral. In response, in 2006, CMS used this authority to establish a new class of oxygen for new portable oxygen technology and called it oxygen generating portable equipment (OGPE). To comply with the budget neutrality mandate, CMS decreased the payment amount for stationary oxygen equipment. The payment decrease for oxygen concentrators was designed to account for increased expenditures for OGPEs as more beneficiaries used that technology.

In 1997, Medicare paid for DME based upon fee schedules. There was no Competitive Bidding program for DME and no Competitive Bidding rates. In addition, by its terms, the CMS regulation establishing the offset for oxygen concentrators applied to the unadjusted fee schedules under the fee schedule methodology mandated by Congress under § 1834 (a) of the Social Security Act (SSA).

In contrast, the 2017 fee schedules for concentrators in rural areas are based on information from the Competitive Bidding program under the methodology in SEC. 1847. [42 U.S.C. 1395w–3] of the Social Security Act. These two statutes, § 1834 and § 1847, describe different reimbursement methodologies that do not overlap. Regulatory sections 414.226 applies to fee schedules based on suppliers' reasonable charges from 1986 to 1987. Section 414.210 (g) applies to fee schedules based on regional average single payments amounts (SPAs) from competitive bidding areas (CBAs).

The following are examples of these drastic cuts for HCPCS 1390:

CBA Round	CBA Region	CBA Rate	1/1/17 Rural Rate	% Difference
RI 2017	Miami-Ft Lauderdale, West Palm Beach, FL	$90.01	$77.16	-14.28%
R2 ReCompete	Birmingham-Hoover, AL	$89.86	$77.16	-14.13%
R2 ReCompete	Knoxville, TN	$87.00	$77.16	-11.31%
R2 ReCompete	Raleigh, NC	$86.84	$77.16	-11.15%
R2 ReCompete	Albuquerque, NM	$86.09	$77.16	-10.37%

The Risk to Rural America

These implemented additional cuts to non-competitive bidding areas only exacerbates beneficiary access problems caused by Competitive Bidding.

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- **Rural America has unique attributes that have distinct costs that differ from their urban counterparts.** The HME Industry has convincing data that indicates providing DME items in rural areas have higher costs in order to access, care for, and support non-urban and rural beneficiaries, which are *not accounted for* in the RSPAs, such as:
    - Employee time, fuel costs, and mileage to drive to the beneficiary's residence
    - Widely ranging geological and road characteristics that could require specialty vehicles, including 4 wheel drive, ATVs, tractors, snowmobiles, ferry coordination, and more
    - Sparsely populated areas that don't offer the same routing efficiencies as dense urban areas
- **Suppliers in non-CBAs will not have economies of scale to offset the drastic payment cuts.** In CBAs, suppliers try to offset the significant payment cuts through increased volume of beneficiaries while supplementing payments with serving markets outside the CBA. However, under this forthcoming mandate to expand the program nationally, suppliers in non-CBAs will receive the same drastic payment cuts set in CBAs, without exclusive contracts and increase in volume of business or the ability to compensate with higher rates outside of the CBA.
- **Unsustainable reimbursement is stripping communities of resources.** Over 40% of traditional HME companies have closed or are no longer taking Medicare due to the unsustainable pricing derived from the controversial Medicare auction program since 2013. The drastic loss of suppliers has a crippling effect on beneficiaries' access to critical home medical equipment and services and jeopardizes the homecare infrastructure in which millions rely to safely maintain their independence at home.

Solution

On November 2, 2017, Representatives Cathy McMorris Rodgers (R—WA) and Dave Loebsack (D—IA) introduced HR 4229 "Protecting Home Oxygen & Medical Equipment Access Act" (Protecting HOME Access Act). This legislation will update the budget neutrality provision for oxygen which was enacted prior to the Competitive Bidding program. It will amend Section 1834(a)(9)(D)(ii) of the Social Security Act by clarifying that the budget neutrality provision shall not apply to items and services in which there is a competitive acquisition program or with respect to which payment is adjusted. This will become effective for items and services furnished on or after 30 days of enactment of this Act.

Our Ask:

AAHomecare strongly urges Members of Congress to co-sponsor HR 4229 to provide relief for homecare patients and suppliers in non-Competitive Bidding areas. Members of Congress should contact Representative Cathy McMorris Rodgers' office to become co-sponsor.

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