



## **Congress Must Stop Drastic Cuts to DME Items in Non-Competitive Bidding Areas – H.R. 2771**

### **Issue**

Over the last few years, Congress and Centers for Medicare and Medicaid Services (CMS) have made significant changes to the Durable Medical Equipment (DME) benefit in Medicare to address serious access issues derived from the DMEPOS Competitive Bidding Program (CBP). Representatives Cathy McMorris Rodgers and Dave Loebsack have introduced important legislation that will continue this effort and protect Medicare beneficiaries' access to the durable medical equipment they need. The Protecting Home Oxygen and Medical Equipment Access Act of 2019 (HR 2771) will make the rural relief provided by CMS permanent (50/50 blended rate), provide additional relief for non-rural non-bid areas at a rate of 75 (CBP-derived rates)/25 (fee schedule rate), and will eliminate an outdated oxygen budget neutrality requirement.

### **Background**

On October 31, 2014, CMS released a final rule, which established the methodology for making national price adjustments to the fee-for-service payments of specific DME. On January 1, 2016, the first phase of the two-part reimbursement adjustment – which applies pricing derived from highly populated Competitive Bidding Areas (CBAs) to all areas of the country without properly taking into account the increased cost of supplying DME items in non-bid areas -- went into effect. On July 1, 2016, the prices were fully phased in, slashing Medicare reimbursement by over 50% on average.

Exacerbating this underlying problem is the fact that CMS applied a budget neutrality "offset" to the 2017 rural fee schedules for stationary oxygen equipment. This provision was originally passed by Congress in the Balanced Budget Act of 1997, which was years before the CBP was enacted in 2003. This outdated regulation was never intended to apply to rates derived from the CBP to oxygen reimbursements, resulting in even more unsustainable rates in rural communities.

Due to mounting concerns about access to this cost-effective and patient-preferred method of care, especially in non-CBAs or rural America, Congress intervened and included language in the 21st Century Cures Act to extend the reimbursement rates in effect on January 1, 2016 through December 31, 2016. This provided retroactive relief to DME suppliers, but on January 1, 2017, the full reimbursement cut went back into effect. These cuts fail to consider the unique attributes of health care in rural America, which have distinct cost difference from their urban counterparts and are stripping communities of DME resources. It's estimated that over 40% of traditional DME companies nationwide have either closed or are no longer taking Medicare patients due to these unsustainable payment cuts.

At the urging of Congress, patients and providers, CMS issued an Interim Final Rule on May 9, 2018 that provided emergency relief to rural areas until the end of 2018 at the 50/50 blended reimbursement rate. On November 1, 2018, CMS finalized the ESRD/DMEPOS rule which extended the rural relief until the end of 2020. It is unclear what CMS plans to do after 2020. While the relief was much needed, non-rural, non-Competitive Bidding Areas did not receive any help.

From seniors to those with disabilities or chronic conditions, people across the country rely on DME to go about their daily lives -- whether it's simply to walk around without falling or to breathe normally when their lungs can no longer do it on their own. But this equipment cannot save lives if it isn't available to those who need it most, especially in rural communities where we know barriers to access health care already exist.

### **The Risk to Rural America**

**These additional cuts to non-Competitive Bidding Areas only exacerbate beneficiary access problems caused by Competitive Bidding.**

- **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 Regional Single Payment Amounts (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 cannot offset the drastic payment cuts.** In CBAs, suppliers try to offset the significant payment cuts through increased volume of beneficiaries. However, CMS has expanded these drastic cuts nationally, suppliers in non-CBAs will receive the same drastic reimbursement reduction set in CBAs, without exclusive contracts or an increase in volume of business.
- **Unsustainable reimbursement is stripping communities of resources.** Over 37% 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 May 15, 2019, Representatives Cathy McMorris Rodgers (R—WA) and Dave Loebsack (D—IA) introduced HR 2771 “Protecting Home Oxygen & Medical Equipment Access Act” (Protecting HOME Access Act). This legislation will make the rural relief provided by CMS permanent (50/50 blended rate), provide additional relief for non-rural non-bid areas at a rate of 75 (CBP-derived rates)/25 (fee schedule rate), and will eliminate an outdated oxygen budget neutrality requirement.

### **Our Ask:**

**AAHomecare strongly urges Members of Congress to co-sponsor HR 2771 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 a co-sponsor.**