



## **Congress Must Pass H.R. 1361 / S. 486 --- Clarification of Exemption of Complex Rehab Wheelchair Accessories from Medicare Competitive Bidding**

### **Issue**

The Centers for Medicare and Medicaid Services (CMS) planned to inappropriately apply Competitive Bid Program (CBP) pricing to Complex Rehab wheelchair accessories on January 1, 2016. This would violate the intent of past Congressional legislation and create major access problems for Medicare beneficiaries and other people with significant disabilities who rely on individually configured Complex Rehab wheelchairs. As a temporary measure, Congress passed a one-year delay in 2015 that expired on December 31, 2016 and then passed an additional six-month delay in 2016 as part of the 21<sup>st</sup> Century Cures Act that will expire on June 30, 2017. To provide permanent protection Congress must pass H.R. 1361 / S. 486 because:

- CMS' plans violate Congress' intent in the Medicare Improvements for Patients and Providers Act of 2008 (Section 154) requiring CMS to exempt Complex Rehab power wheelchairs and accessories from the CBP (note: these were the only Complex Rehab items being included in CBP at that time).
- It is contrary to subsequent Medicare policies created by CMS following the 2008 legislation which stipulated that accessories used on Complex Rehab manual and power wheelchairs were to be paid at traditional fee schedule amounts, not at CBP rates.
- CMS is using information obtained through the bidding of accessories used on Standard wheelchairs and is inappropriately applying that pricing to Complex Rehab accessories that were not part of the CBP. CMS has elected to group heterogeneous products under a single HCPCS code 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 bids because Complex Rehab wheelchairs and related accessories were not part of the CBP.
- CMS is using extremely limited information from a sample size of only 174 power wheelchairs in nine cities. Moreover, the 2008 CBP bid worksheet provided to suppliers indicated usage for many of the accessories between only one unit and five units per year. CMS plans to apply this grossly inadequate seven-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.

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 were to go into effect January 1, 2016.

In December 2014 CMS issued a "Frequently Asked Questions" document that stated 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 FAQ document created the issues and violations requiring Congressional clarification.

In April 2015 Congress formally requested that CMS rescind this policy through a 101-signature bipartisan House of Representatives letter. In August 2015, a similar bipartisan letter was sent by 23 Senators. CMS responded it would not accept the Congressional recommendations.

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.

### **Needed Congressional Action**

To permanently protect access to individually configured Complex Rehab equipment for Medicare beneficiaries and other people with significant disabilities Congress needs to pass H.R. 1361 / S. 486 to clarify that CMS cannot apply Competitive Bid Program pricing information to accessories used with Complex Rehab power and manual wheelchairs.

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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 related supporting services. For additional information visit [www.ncart.us](http://www.ncart.us).*

*The National MS Society mobilizes people and resources so that everyone affected by multiple sclerosis can live their best lives as we stop MS in its tracks, restore what has been lost and end MS forever. For additional information visit [www.nationalmssociety.org](http://www.nationalmssociety.org).*

*The United Spinal Association is dedicated to enhancing the quality of life of all people living with a spinal cord injury or disease (SCI/D). Their programs and services provide support to people with a Spinal Cord Injury, their loved ones, care providers and professionals. Visit [www.unitedspinal.org](http://www.unitedspinal.org).*