

## Compliance Today – March 2019 New developments in Medicare's DMEPOS competitive bidding program

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By Joshua I. Skora, Michele M. Tran and Adam S. Cooper

Joshua I. Skora ([Joshua.Skora@klgates.com](mailto:Joshua.Skora@klgates.com)) is a Partner and Michele M. Tran ([Michele.Tran@klgates.com](mailto:Michele.Tran@klgates.com)) and Adam S. Cooper ([Adam.Cooper@klgates.com](mailto:Adam.Cooper@klgates.com)) are Associates in the Dallas offices of K&L Gates, LLP.

Current contracts awarded to Medicare-enrolled suppliers in the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) competitive bidding program (CBP) expired at the end of 2018. These contracts establish which suppliers may supply specific items of DMEPOS to Medicare beneficiaries in designated competitive bidding areas (CBAs) to the exclusion of other suppliers.<sup>[1]</sup> The contracts also establish the single payment amounts (SPAs), or allowed payment amounts, for those specific items of DMEPOS based on the bid prices submitted by contracted suppliers. The Centers for Medicare & Medicaid Services (CMS) has yet to complete (and by its own admission, was unable to complete before the current CBP contracts expired) the competitive bidding recompetete process through which new CBP contracts are issued.<sup>[2]</sup> As such, there will be a gap or lapse in the DMEPOS CBP when the current contracts, which ended on December 31, 2018, expire. This lapse primarily presents two issues.

First, under the CBP, established reimbursement rates for specific items of DMEPOS expired when the awarded supplier contracts expired. Thereafter, it was unclear what reimbursement rate would apply during the CBP lapse period—the competitively bid price, the non-CBP fee schedule rate, or some other fee schedule amount.

Second, the CBP normally limits which suppliers are able to provide competitively bid items of DMEPOS. When the current contracts expired, those restrictions also expired, leaving uncertainty regarding the ability of a Medicare-enrolled supplier to furnish DMEPOS to beneficiaries in CBAs. On July 19, 2018, CMS, recognizing its inability to timely complete the recompetete process, proposed rules to provide greater clarity and guidance in the event of a lapse in the CBP.<sup>[3]</sup> CMS finalized the proposed rule—unchanged—on November 1, 2018.<sup>[4]</sup>

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