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**Date:** May 31, 2023

**Re:** Response to Public Comments GCR 22-126: [2023 Durable Medical Equipment, Prosthetics/Orthotics, and Supplies \(DMEPOS\) Fee Schedule Update](#)

A summary of comments received on, GCR 22-126: 2023 Durable Medical Equipment, Prosthetics/Orthotics, and Supplies Fee Schedule Update, and the Agency of Human Services responses to those comments is included below. Comments were received from the Home Medical Equipment and Services Association of New England (HOMES), and a representative for one of the Medicaid enrolled DME providers. No other comments were received.

HOMES submitted the following comments in objection to the adjustment to the rate adjustment to the DMEPOS Medicaid Fee schedule.

**HOMES Comment:** The Home Medical Equipment and Services Association of New England (HOMES) is submitting public comments regarding Rate Setting Changes implemented March 1, 2023, for the Durable Medical Equipment Fee Schedules. It is our understanding that these rates in general represent a reduction in rates of 2% from the October 2022 Medicare Fee Schedule, as the January 1, 2023 fee schedule had not been released at the time of the SPA decision-making.

**State Response:** DVHA appreciates the comments from The Home Medical Equipment and Services Association of New England (HOMES) and our continued partnership. The reduction in the percentage of Medicare rates by 2% is based on the October 2022 Medicare fee schedule file. This was the most recent available Medicare fee schedule when DVHA began the modeling process to update the Medicaid DMEPOS fee schedule. The decrease in the percentage of Medicare rates DVHA matches was due to budgetary constraints within the overall State budgeting process. As noted in the GCR notice, the estimated gross annualized budget impact is \$255,644. This is a net increase in payments to DMEPOS providers. While DVHA has aimed to implement annual updates as close as possible to January 1<sup>st</sup>, the release of this update was delayed due to the Medicaid budget process and legislative review.

**HOMES Comment:** Insufficient notice of the rate adjustment and implementation prior to the deadline for public comment.

- Decision to change rates was made prior to December 31, 2022, as comment in plan proposal indicates that rates were being based upon October 2022 Medicare rates, as new Medicare rates were available on or about December 15, 2022. Notice was not provided to DME providers until the DME stakeholder meeting February 14th.
- State Plan Proposed Amendment was posted to the Global Commitment Register

- February 15, 2023. However, this is listed as a 2022 proposed policy – GRC 22-126.
- Accordingly, no comments will be considered, which appears to violate the regulation of public comments and responses to public comment. While the state seems to retain a loose authority to change rates belonging to a class as part of Waiver Authority #5 Section 1902(a)(13), 1902(a)(30)], Special Term and Condition #6.8, we believe that this does not meet the intent of this regulation. If incorrect, we request clarification of the authority to implement prior to public comments.

**State Response:** The GCR number has no impact on the timing of the decision related to this change. The budget authority for this change was not approved until January 20, 2023. The Department is limited to implementing changes for which appropriations are available. This change was presented to the HOMES group and other DMEPOS providers during a quarterly stakeholder meeting on February 14, 2023. During the meeting DVHA advised providers the GCR would be posted later that week and a 30-day comment period would be available.

The proposed GCR was published prior to the effective date in accordance with federal public notice requirements for changes in methods and standards for setting payment rates at [42 CFR § 447.205](#). This GCR was posted 15 days prior due to the timing of approvals. Comments received are reviewed and considered and the State's response to any comments is posted with the final GCR.

**HOMES Comment:** While this document was not published until February 15th, the document states that at the time of this change, the latest Medicare rate change was from October 2022. We question the decision to utilize the October 2022 fee schedule, as we believe that the department should have been aware of the intent of CMS to increase DME rates in response to the impacts of the PHE and continued impacts of supply chain challenges. Regardless, the unintended consequence may be fewer DME providers and/or fewer DME providers with the ability to carry certain products due to rate reductions. Providers have been making the case throughout New England about the increased costs associated with providing DME. The areas impacted include, but are not limited to:

- Cost of products from distributors and manufacturers.
  - The cost to purchase DME has increased considerably since 2019.
  - The cost of freight from distributors and manufacturers has increased by more than 10% and can exceed the cost of the product in some cases.
  - Surcharges on a per item basis existed during the height of the PHE frequently exceeded cost of the item.
  - Shipping and delivery costs have increased exceptionally during the last several years.
- USPS, FedEx, UPS, etc., regularly have announced rate increases. Further, fuel costs have been much higher than previously.
- Labor costs have also increased considerably. DME labor occurs in areas including, but not limited to:
  - Intake – receiving an order for DME either in person, via electronic means, or via phone. Entering initial information into billing software.
  - Validation and Documentation – Insurance verification and confirmation with patient of desire to receive product.

- Product procurement – product needs to be ordered to be shipped directly from the manufacturer or to be stocked in the warehouse of the DME provider.
- Delivery – If necessary, delivery and/or setup or instruction for DME picked up in the Provider’s location. This can take significant time, depending upon the customer and/or the location of the customer. For larger products, such as lift chairs, this often requires two technicians.
- Billing – Signed documentation and/or proof of delivery needs to be documented and billing to occur. Documents are generally scanned and filed into a system.
- Payment posting – payments and/or adjustments/denials are posted, and, if not paid appropriately, researched, corrected, and/or rebilled.

Whether these tasks are done internally, or outsourced in part or whole, each task is part of the process and is part of what should be included in the reimbursement for the item.

**State Response:** As noted in the GCR notice, the estimated gross annualized budget impact is \$255,644. This is a net increase in payments to DMEPOS providers. The January 2023 Medicare fee schedule was not released until December 2022 and modeling had already begun for the Medicaid DMEPOS fee schedule update. The most recent available Medicare fee schedule when modeling began was the October 2022 Medicare file. The state has heard from many provider groups about the increasing costs of providing services. However, the Department is limited to implementing changes for which budgetary appropriations are available. This was considered with the increase in rates.

**HOMES Comment:** Original Global Commitment Register notation is GCR 22-126. This indicates that this information was developed prior to the end of the year. However, at the DVHA DMEPOS meeting of 11/08/2022, there was no mention of these changes. HOMES requests information as to the date of the submission/preparation of GCR 22-126, as GCR 22-125 had a comment period beginning 12/15/2022. CMS released the Medicare fee schedule on or before 12/13/2022.

A provider inquired about the fee schedule December 12, 2022, to which the December 16th reply disregarded the question. No reply was received until 1/3/2023, at which time the statement was made that: The fee schedule will be updated soon to reflect the changes that were made on 1/1/23: <https://dvha.vermont.gov/providers/codesfee-schedules>.

Nowhere is there an acknowledgement of additional cuts to come to providers effective 3/1/2022.

**State Response:** DVHA strives to be a reliable and predictable payer of health care services. DVHA demonstrates this by taking into consideration provider feedback, identifying opportunities to further refine reimbursement methodologies, and updating fee schedules at regular intervals. The Department is limited to implementing changes for which appropriations are available. Outcomes of this review are contingent on budget and legislative approvals. Modeling for the Medicaid DMEPOS fee schedule began in mid-November, prior to the release of Medicare’s January 2023 fee schedule in December 2022.

We believe the comment regarding a provider inquiry from December 2022 is in response to the Prior Authorization changes effective January 1, 2023. Any changes to reimbursement are published in the Global Commitment Register with a public comment period.

**DME Supplier Comment:** I noticed that the state of Vermont has not added coverage of breastmilk storage bags (K1005) and the breast pump replacement parts (A4281-A4286) for use with a personal use breast pump (E0603) into the 2023 DME Fee Schedule. As a Medicaid expansion state, I have been told by HRSA that Medicaid expansion states should be following the updated coverage HRSA guidelines that became effective 1/1/23. Every Medicaid program in the northeast (ME, NH, MA, CT, RI, NY, NJ, and PA) is in compliance with these updated guidelines except Vermont. Please let me know if you have any questions.

<https://www.hrsa.gov/womens-guidelines>

**State Response:** This comment is requesting a change to coverage and is outside of the scope of GCR 22-126 2023 Durable Medical Equipment, Prosthetics/Orthotics, and Supplies (DMEPOS) Fee Schedule Update. DVHA will follow up with a response to this coverage request through the quarterly meetings held with HOMES group of DME providers.