

Support Medicare DMEPOS Competitive Bidding Improvement Act – H.R. 4920/S. 2975

On July 1, 2013 the Centers for Medicare and Medicaid Services (CMS) implemented Round 2 of the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CB). Since CMS implemented Round 2, AAHomecare and other interested groups have collected data regarding beneficiary access problems. Since July 1, 2013, thousands of beneficiaries have reported access problems including longer hospital stays, delays in delivering equipment, and out-right refusal to provide equipment. The dramatic drop in utilization rates in competitive bid areas as reported by CMS exemplifies the access problems and unsustainability of this program. According to the recently released GAO report, DME utilization is falling across the country, but falling faster in CB areas. More than 240 market auction experts and economists have warned that the Medicare competitive bidding program is unsustainable in its current form. It will create significant barriers to access and will destroy the DME infrastructure that seniors and people with disabilities have come to rely on.

The Round 2 payment rates are unrealistically low, unsustainable, and a direct result of the CMS disregarding recommendations from auction experts, grave concerns expressed by providers and consumers, and a mandate from Congress to fix this fundamentally flawed bidding program prior to implementation. Based on Medicare's calculations, reimbursement rates were reduced by 45 percent below current allowables and 72 percent below current allowables for diabetic supplies. Based on this outcome, DME providers are not be able to furnish quality services to Medicare beneficiaries at these rates, Medicare beneficiaries are paying more out-of-pocket for their covered items, and in some cases, they have to pay full, retail price for DME.

Problem

The congressional objective in requiring Medicare to use competitive bidding to establish payment amounts for durable medical equipment was intended to reduce Medicare and beneficiary expenditures and ensure that beneficiaries have access to quality items and services. This objective cannot be met because CMS has designed a program that does not hold bidders accountable, does not ensure that bidders are qualified to provide the products in the bid markets, and produces bid rates that are financially unsustainable.

CMS' Bidding Program Creates Artificially Low Prices

1. **Bid Bonds:** This is the only auction system that does not require bidding parties to put-down a bid bond. Research shows that without some stake in the auction, via a bid bond, auctions are more likely to attract participants who simply want to drive the price up, or down. This type of "gaming" in Round 1 and 2 has led to historically low reimbursement rates, in some cases lower than the acquisition cost. Requiring bidders to put down money, and if they are offered a contract and accept, the bid bonds will become a performance bond; if they do not accept the contract, CMS collects on the bid bond. If the bidder does not win a contract, these bonds can be returned within a set period of time.

2. **Licensure:** There are multiple cases where CMS' and their contractors did not verify the licensure, accreditation, or existence of bidders, bid winners, or contract suppliers. In the most egregious of these cases, all initial contract suppliers in Tennessee had their contracts pulled shortly before the program was scheduled to "go live." The Tennessee contracts were pulled due to the lack of oversight by the competitive bidding implementation contractor. This oversight allowed bidder who did not meet the state's more than 10-year old licensure requirement to submit bids and win contracts. CMS and their contractors should verify all licensure, based on appropriate state licensure laws **PRIOR** to accepting a bid. If the bidding company is not properly licensed, their bid should be removed from consideration and from calculation in the final single payment amount.

Who supports fixing CMS' bidding program?

- 244 economists and auction experts, including five Nobel laureates.
- 178 members of Congress have cosponsored legislation, including both Republicans and Democrats.
- 37 patient and consumer groups.

Solution:

On June 19, 2014, Reps. Tiberi and Larson introduced the Medicare DMEPOS Competitive Bidding Act of 2014 (H.R. 4920). Senator Portman and Cardin introduced the Senate companion bill (S. 2975) on December 4, 2014. This legislation is a common sense approach to address major flaws in the current bid system. H.R. 4920/S. 2975 requires proof of licensure before a supplier can submit a bid and requires a bidding supplier to obtain a bid bond.

Request:

AAHomecare strongly supports a bidding program that includes aspects of auctions that are widely accepted by auction experts to prevent gaming, promote market prices, and ensure that those who bid are willing and able to perform for the beneficiary. **The Association urges members of Cosponsor H.R. 4920 in the House and S. 2975 in the Senate.**