

THE DME “COMPETITIVE” BID PROGRAM IS FUNDAMENTALLY FLAWED - AUGUST 26, 2010

- **Summary:**
 - **The significant flaws in CMS’ design of the bid program will cause Medicare’s most vulnerable beneficiaries to experience a range of unintended consequences that affect choice, access and quality in the DMEPOS benefit.**
 - **Beneficiaries will experience more medical complications, increased use of emergency room care; delay in hospital discharges (increasing hospitals’ costs). The program could compromise beneficiaries’ ability to live independently in the most cost effective setting – their homes.**
 - **This program is not competition; rather it distorts the market by eliminating competition. Should the government be in the business of forcing the creating of oligopolies in a given market?**
 - The program is not an effective “anti-fraud” program as CMS touts. The real solution to keeping criminals out of Medicare is better screening, real-time claims audits, and better enforcement mechanisms for Medicare. Accreditation and surety bonds for home medical equipment providers will go far toward eliminating fraud.
 - CMS has been wholly non-transparent with the affected supplier community in its implementation of the DME bid program, despite President Obama’s January 21, 2009 Executive Order on “Transparency and Open Government.”¹
- **Fundamental Flaws in the Bid Process – Will Jeopardize Beneficiary Access:**
 - *Bidders are not bound to their bids*; leading to speculative low-ball bids in an attempt to win a contract, and hoping other bidders will increase the bid price.
 - *There is no guarantee of volume* – making it impossible to submit a rational bid based on expected volume.
 - *Eliminating 80-90 percent of qualified providers will create an access problem* for all consumers of HME, not just Medicare beneficiaries. The program will destroy the current HME infrastructure that allows consumers ready access to quality items and services.
 - CMS has refused to reveal the financial criteria it uses to determine whether a supplier is financially sound. Of the 2008 winning bidders, 17 percent were on

¹ The Executive Order states, in part, “My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government...”...Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing...”

credit hold or in active litigation with Invacare, one of their manufacturer suppliers, due to non-payment of outstanding balances. Therefore, almost one-fifth of the bid winners could not have purchased product from Invacare and were likely wholly financially non-viable in the short and longer term.

- “*Predatory pricing*” to force out local competition, will reduce long run competition by local suppliers that cannot maintain business operations before the next bid period opens.
- The bid program *incentivizes providers to submit “suicide bids”* in order to survive in the marketplace, though these low prices may not be able to sustain the business over the long term.
- The bid prices of winners who do not accept the bid price are not removed from the price calculation, which causes bid winners to be affected by the low bids of speculators
- The method used to calculate the bid price for each item creates opportunities for “gaming” the system – activity which incentives irrational bidding.
- The consequences of the bid program from a game theory perspective are unpredictable – the entire bidding process is a “home grown” set of rules that has no guarantee that it will be beneficial to Medicare beneficiaries over either the short or long term.

○ **Known Contractors Have Shaky Financials:**

- While CMS has not yet released the names of the contractors, anecdotal information suggests that some contractors may not have solid financials to sustain the low bids in the bid areas.
- 136 House Members have requested the information (see attached August 12, 2010 letter).
- *Rotech Healthcare*: one of the largest national DME companies, announced July 12, 2010 that it was offered 17 contracts in the first round DMEPOS re-bid, despite the fact that, as of June 30, 2010, it has approximately \$513.2 million in long-term debt outstanding, was considering restructuring or filing for bankruptcy, and expects to lose up to \$900,000 in the CBAs in the first quarter of 2011.
- *One Stop Medical*: Miami FL –won a contract but has a significant state tax lien against it.
- *Lincare*: Lincare’s bids to provide the equipment were higher than the new rates established for the markets, according to a Lincare release. Lincare bid 19 percent more than the rate established by CMS for Charlotte and 16 percent more than the rates established for Miami. “We decided to execute the contracts we were offered because we believe we can support the Medicare beneficiaries in those markets by subsidizing their care with the resources we have available to us as a national company....We have serious concerns about the care that will be available to similar patients in the other seven markets.”

Beneficiaries Will Lose Choice: Freedom of choice will be challenged for beneficiaries in terms of both types of suppliers and types of equipment that will be available.

- The bid program will eliminate 80-90 percent of suppliers in each competitive bidding area (CBA), limiting choice of preferred providers and disrupting long term continuity of care.

Beneficiaries Will Lose Access: Competitive bidding poses detrimental consequences for beneficiaries in terms of their access to quality equipment and services; especially over the longer term as the number of suppliers is reduced.

- Lower payments to suppliers will reduce beneficiary access to high quality, brand name, and customizable equipment, and other effective supplies that are familiar to the patient.
- The bid program will not adequately protect against supplier unavailability and delayed response time, causing hospital discharge delays and/or more emergency department visits.
- The bid program will reduce the provision of various customer services on which beneficiaries rely to remain independent and prevent complications, such as evaluation, customization, adjustment, education, training, and timely repair and maintenance.

Quality will Deteriorate: Suppliers will not be able to provide high quality products, and may significantly reduce the services they provide to beneficiaries.

- Suppliers will not be able to afford (and are not incented to provide) higher quality products, which can affect beneficiary mobility, general health condition, and quality of life.
- Lack of competition will reduce quality.

Marketplace Implications: The design of the competitive bidding system creates economic incentives that will have a negative impact on price, quality, and service.

- The three-year bid period, the composite price structure used to calculate prices, and both “predatory” and “suicide” bidding produce unrealistically low bid prices.
- A reduced number of suppliers leads to less price competition over the long term.
- With drastically fewer providers, the program will restrict consumer access to well-supported care.
- With catastrophically lower payments, choice and quality for home medical products will decline.
- With loss of numerous competitive suppliers, expedient deliveries of items and services will be eliminated.
- The continuum and coordination of care between doctors, discharge planners, patients, and home medical equipment providers will be severely hindered. Multiple providers, for multiple products will be confusing and costly to care coordinators and patients and their families.

Program Will Cause Serious Job Loss: This is a job-killer with an unknown total fall-out from the domino-effect caused by other payer reductions.

- In Round One, about 90% of qualified providers were barred from Medicare program.
- If a provider is unsuccessful in securing a contract under the program, the chance of survival is nil. Nationally, home medical service companies average 42% of their revenue stream from Medicare. Factor in loss from other payers and the overall impact is catastrophic.
- Over 100,000 jobs will be lost through Round 2.

Beneficiaries and Clinicians Overwhelmingly Support Elimination of the Bid Program as CMS Has Constructed It:

- American Association for Respiratory Care
 - The ALS Association
 - American Association for People with Disabilities
 - International Ventilators Users Network
 - Muscular Dystrophy Association
 - National Council on Independent Living
 - National Emphysema/COPD Association
 - National Spinal Cord Injury Association
 - RetireSafe
 - Post-Polio Health International
 - United Spinal Association
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NOTE: CMS STATEMENTS REGARDING THE BID PROGRAM CONTAIN FACTUAL ERRORS:

- The July 2, 2010 letter from HHS Secretary Sebelius to Rep. Bruce Braley overstates three fold the potential savings for a beneficiary requiring a standard wheelchair because it wrongly states that a rental period lasts three years when, in fact, Medicare law limits rental payments to 13 months. The letter also mis-states by ten times the estimated annual savings at \$17 billion, when, in fact, that is the CMS estimate for ten years of savings.
- CMS' July 2, 2010 Press Release overstates by four times the estimated savings from diabetic supplies times because it ignores the Medicare utilization limits.

Attachments:

August 12, 2010 Letter to CMS from 136 House Members
August 13, 2010 Letter to CMS from Senator Sherrod Brown
August 9, 2010 Letter to CMS from Senator Debbie Stabenow
Job Loss Impacts