



**Issue Paper**

**Co-sponsor H.R. 3790**

**End “Competitive” Bidding for Home Medical Equipment and Protect Patients and Providers**

**Request**

Congressman Kendrick Meek (D-Fla.) introduced H.R. 3790 to end the Medicare “competitive” bidding program for home medical equipment and services (HME). This bill would eliminate the bidding program because it is fatally flawed and these flaws were not corrected over the past twelve months by the Centers for Medicare and Medicaid Services (CMS). The cost of eliminating the program would be offset by reductions in DMEPOS payment rates, ensuring that seniors and taxpayers still receive the intended savings from the bidding program while protecting patient access to care.

The American Association for Homecare (AAHomecare) strongly urges support for H.R. 3790. The bidding program restricts access to quality home care for seniors and people with disabilities. Providers of home medical equipment face serious disruption to their businesses if competitive bidding becomes the mechanism for Medicare reimbursement rates.

**Sacrifices Care for Seniors and People with Disabilities**

- Competitive bidding reduces patient access and choice for quality HME items and services.
- The program selectively contracts with a very restricted number of homecare providers based on the lowest-bid prices.

**Eliminates Businesses and Jobs (Anti-competitive)**

- The bid program is actually anti-competitive because it reduces the number of market competitors.
- 90 percent of qualified home medical equipment and service providers would have been barred from providing HME items and services to Medicare beneficiaries in the first round of bidding.
- The Medicare bid program will result in job losses and business failure for thousands of small providers, which runs counter to the President’s February 24 speech to Congress when he pledged to “do whatever it takes to help the small business that can’t pay its workers.”

**CMS Did Not Correct the Fundamental Flaws in the Program**

- The bid program is fundamentally flawed. The program was postponed by Congress in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), but CMS did not correct the chief flaws before reissuing regulations to restart the bidding.

**Bidding Is Not a Cost-effective Solution for Medicare**

- Competitive bidding will increase Medicare costs because it will lead to more expensive, longer hospital stays, shifting costs from Medicare Part B to Part A.
- Home medical equipment and services already provide a cost-effective alternative to expensive institutional care and a solution for controlling spending growth in Medicare. For instance, under Medicare, a day of oxygen therapy costs less than \$7 per day. A day in the hospital costs more than \$5,500.
- Home medical equipment is the most cost-effective and is the slowest-growing portion of Medicare spending according to the most recent National Health Expenditures data from CMS.

**Background**

The Medicare Modernization Act of 2003 (MMA) requires Medicare to replace the current HME payment methodology for certain items with a selective contracting process. The MMA allows the Secretary to

contract with as few providers as the Secretary determines necessary to provide items and services in highly populated areas to meet the anticipated demand. Any provider not awarded a contract would be prohibited from providing bidded Medicare items for a 3-year period.

Before the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) was enacted, the program was slated to go into effect in the first 10 metropolitan statistical areas (MSAs) on July 1, 2008. The program would expand to an additional 70 MSAs in subsequent years and bid rates could be implemented in additional MSAs thereafter.

On January 16, 2009, CMS issued an interim final rule (IFR) without any public comment or review of the flaws in the design of the program. Due to the inherent flaws in the bidding program, Congress delayed the program through MIPPA in 2008. The IFR went into effect on April 18, 2009.

### **Negative Impact of Bid Program on Patients and Providers**

The initial roll-out of the bidding program in 2008 produced disastrous results for home medical patients and for providers (mostly small businesses) that were excluded from Medicare as a result of the first round of bidding. Due to the problems encountered in Round One, Congress enacted MIPPA, which included a delay and reform of the bidding program in order to improve the process, establish quality measures, and make other reforms. During the implementation of Round One, before passage of MIPPA, serious problems were encountered. These problems will occur again, including:

- **Disruption to patient services** – Patients were forced to go to multiple, unfamiliar providers for different items and services. Informal surveys showed that some winning providers were unable to provide care to beneficiaries.
- **Greater costs to Medicare due to longer hospital stays** – Confusion about the restricted list of contracted home medical providers delayed hospital discharges and triggered unnecessary emergency room visits.
- **Non-local providers** – Providers with no history of servicing a geographic area or no operations in a bidding area were awarded contracts;
- **Inexperienced/unlicensed providers** – Companies were awarded Medicare contracts to provide equipment and services for which they were not licensed and had no previous experience providing.
- **Desperation bidding** – Structural flaws in the bidding program caused providers to submit artificially low bids because they were faced with the threat of losing their businesses if not awarded a contract. Winning contracts also were viewed as commodities that could be sold once a bid was won.

### **Offset**

- In 2010, 2011, and 2012, the bill eliminates the annual payment update (CPI-U) for all HME items and reduces payment rates for all items by 0.25 percent in each year.
- In 2014, the bill eliminates the additional 2 percent increase in payment rates. All items would still receive the annual CPI-U update.
- In 2015, the bill eliminates the annual CPI-U update for all HME items and reduces payment rates for all items by 0.5 percent.
- Complex rehabilitative power wheelchairs (defined as Group 3 and above) would not be subject to any of the reductions listed in the offset.