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### **Congressional staffers get up close and personal with bidding problems**

WASHINGTON - A pair of Hill briefings May 24 should leave no doubt in the minds of congressional staffers, including for the first time those in the Senate, that competitive bidding is a disaster, say industry stakeholders.

"CMS is doing an atrocious job with the DME auction program," was the first slide in Prof. Peter Cramton's presentation to the 60 or so House staffers who attended the morning hearing. That message carried over to an afternoon briefing for about 40 Senate staffers.

"I see the Senate briefing as a significant step forward," said Jay Witter, senior director of government relations for AAHomecare. "I think the Senate is now paying more attention to the problems of bidding."

That's important. While House lawmakers have been supportive of repealing competitive bidding--H.R. 1041 now has 110 co-sponsors--Senate lawmakers haven't been responsive to introducing a companion bill.

"Trying to educate people in the Senate has been really tough," said Cara Bachenheimer, senior vice president of government relations for Invacare. "This is the first time the Senate side has heard this firsthand from Dr. Cramton."

Also speaking at the morning hearing was Tom Milam, a PAOC member and former CEO of mail-order diabetes supply firm AmMed Direct. Milam was one of 12 PAOC members who sent a letter to CMS earlier in May seeking Round 1 data.

"The majority of the PAOC is not satisfied or happy with the quality of the data that CMS has been providing us with," said Milam. "Communication has been stifled and our suggestions have not been replied to. That leaves us unable to fulfill our duties."

[homecaremag.com](http://homecaremag.com), 25 May 2011

## **Cramton Bashes Competitive Bidding Again**

by GREG THOMPSON

WASHINGTON — At two Capitol Hill briefings yesterday, economist Peter Cramton once again warned Congress that Medicare's [DMEPOS competitive bidding program](#) will fail.

Cramton, a professor at the University of Maryland, has continued as an outspoken critic of the program since [his first warning in a letter to Congress](#) last September. Signed by 166 other economists, the letter dissed the program's design and set out what Cramton has described as its "fatal flaws," among them non-binding bids and a system that encourages lowball bids not based on costs.

The sum of the problems, the economists said, "suggests that the program over time may degenerate into a 'race to the bottom' in which suppliers become increasingly unreliable, product and service quality deteriorates, and supply shortages become common."

In a presentation to about 60 House staffers yesterday morning and another to 45 Senate aides in the afternoon, Cramton laid it all out again, this time armed with a PowerPoint to explain the bidding program's poor design.

His first slide read, "Bad news: CMS is doing an atrocious job with the DME auction program."

Cramton said that with the lack of transparency in quantities associated with bids, CMS can essentially manipulate prices to arrive at reimbursement rates it thinks are reasonable. "They have total flexibility to set almost any price they want," he said.

"The current CMS auction approach is a scandal now and ultimately will be a train wreck," Cramton told *HomeCare* before the briefings. "The only reason we have not seen the train wreck yet is that CMS has almost complete flexibility to set prices in the current system. But make no mistake: These prices are arbitrary and unrelated to providers' costs.

"It is absurd for CMS to claim that 'all is well' given such a process," he continued. "Yet that is what they have done in the nine months since I first looked at the Medicare competitive bidding program."

Cramton was backed at the House briefing by additional speakers, including Barbara Rogers, president and CEO of the National Emphysema/COPD Association and a member of the Program Advisory and Oversight Committee. Rogers, who uses oxygen, a scooter and other DME, told staffers the bidding program has put HME companies out of business, which eliminates choices for Medicare patients.

As for her term on the PAOC, which is supposed to advise CMS on competitive bidding, Rogers said it had been an "exercise of frustration." Both she and speaker Tom Milam, former CEO of mail-order diabetes supply firm AmMed Direct and a PAOC member, said CMS needs to give up more information on the program.

Milam said although the PAOC is charged with advising CMS on the financial standards to which it holds bidders, it has not shared those standards.

Earlier this month, [12 of the 17 PAOC members wrote a letter](#) to CMS' Deputy Administrator Jonathan Blum asking for more information on Round 1. Among other things, the May 6 letter requested the number of contract suppliers that have gone out of business in the nine competitive bidding areas since implementation Jan. 1, information on the mail-order diabetic supplies category and quarterly updates on the percentage of beneficiaries using DME.

Without such data, the PAOC members said, they can't give appropriate advice about the program.

In remarks introducing the House briefing, Rep. Sue Myrick, R-N.C., whose district includes Charlotte, one of the Round 1 CBAs, told the congressional aides that the impact of the program should be examined before it moves to another 91 areas in Round 2.

Cramton told the staffers he continues to work on the issue pro bono because he feels so strongly about the competitive bidding program and its problems, although he does believe that a bidding program could work. In April, he [held a mock auction](#) to prove, he said, how a well-designed system could be run.

"I have learned that CMS requires more direction from Congress on the DME program," Cramton told *HomeCare*. "Congress must insist, through legislation, that CMS conduct efficient auctions consistent with best practice and science. The auctions must be transparent, and an independent market monitor must observe all aspects of the market and report directly to the Secretary of Health and Human Services about potential problems and solutions."

Said Cramton, "The stakes are enormously high. Congress must insist on fundamental reform."

### **We'll Take the Help, Industry Says**

"While Professor Cramton believes a bidding program could be redesigned in a way that would work, his stinging criticism of the CMS implementation of Round 1 provides ample arguments to repeal the program," said Tyler Wilson, president of the American Association for Homecare, who attended the briefing.

[H.R. 1041](#), the industry-backed competitive bidding repeal bill, continues to gather bipartisan support and has picked up 103 cosponsors, but has no companion in the Senate.

Invacare's Cara Bachenheimer, senior vice president of government relations, hopes yesterday's briefing will elevate the issue's profile in that chamber.

With 45 offices represented — almost half of the Senate — she pointed out, "The briefing was very effective.

"Part of our issue in the Senate is that for whatever reason, the level of education about competitive bidding is just not the same as it is for some of the members in the House. If you look at a more global

picture of what's going on, we're competing against some pretty big issues like the budget and the debt ceiling, and it's tough to get a word in."

But "with that many people showing up and having someone like Dr. Cramton explain how the bidding structure resulted in a fatally flawed program," Bachenheimer said, "I think that's going to do a lot to move us along in the Senate. With the lack of transparency, he essentially is saying that what CMS has done is constructed another government-administered price program where the bid prices have no relationship to a supplier's costs, and therefore you have a program that has no relationship to market pricing."

While "it's going to be very, very difficult to repeal this program and not replace it with something else," Bachenheimer said, Cramton is a forceful ally in "distilling the details of the program's flaws."

"That doesn't mean we agree on what the next step is," she said. That's something the industry "will have to figure that out sooner rather than later, whether it's the Cramton plan or whether it's something else."

Still, getting to that next step is topmost on the agenda, and the clock is ticking. CMS has said it would announce the products to be included in Round 2 sometime this summer.

"We don't have any new information since the PAOC meeting April 5," Bachenheimer said. "They said it would be this summer, but who knows whether that means June 20 or September 1? We just don't know ..."

"If they don't see a problem with products that are in Round 1, they are just going to add to the list and not subtract from that list," Bachenheimer said. "The only reason they would subtract is if there is an access problem from CMS' perspective," and so far agency officials are not saying anything of the sort.

"At the PAOC meeting, [CMS said everything is wonderful](#), everything is hunky dory with the program, and they gave no indication that they would be changing anything," Bachenheimer said.

For Cramton's PowerPoint presentation, see his website at

<http://www.cramton.umd.edu/papers/health-care/>.

## California Watch



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A new competitive bidding program meant to save Medicare billions is shaking up medical suppliers across the U.S., including in Riverside and San Bernardino counties where the new system is already in place.

Medicare [revolutionized the way](#) it pays for items such as oxygen tanks and diabetic test strips, partly in response to widespread and blatant fraud. Federal agents routinely arrest hucksters, including criminal [street gang members in Los Angeles](#), making millions off fraudulent power wheelchair sales.

Under the new system, medical supply firms compete for contracts to supply items to Medicare beneficiaries. Previously, firms simply had to send paperwork to Medicare for approval to sell a wide array of medical items, although the process has become more rigorous in recent years with bond requirements and storefront inspections.

The new program holds the promise of saving Medicare \$27 billion over 10 years, officials say, a tantalizing prospect as program costs are an increasingly [hot topic with Congress](#) and the public.

But industry officials and a prominent group of economists who are watching the program's early rollout in nine cities say the program has serious flaws.

Esta Willman, President of Medi-Source Equipment & Supply in San Bernardino County, is supporting a [federal effort to eliminate](#) the competitive bidding process altogether.

Willman, who runs a 20-year-old business, said the new program requires companies to submit bids for various categories of medical supplies, such as home oxygen tanks or diabetes care items.

She said she bid in five categories and got contracts in two that require her to bill the government at lower rates than what she's used to. Willman said she isn't sure whether the reduced level of business will be enough to sustain her company, which employs seven people.

“Do I close the doors or do I take these two contracts and hope that in the meantime I can diversify payer mix or do something different,” Willman said of her dilemma.

She said the new system seems to be forcing a consolidation in the market to the large companies that can afford to supply items at the lowest prices.

Willman said that’s a shame since she questions whether conglomerates will be able to provide the level of service that her firm offers. She said her company has gone out at 2 a.m. to help patients having trouble with a home oxygen tank.

“I don’t believe we’ve seen the worst of it yet,” she said, noting that a second round of competitive bidding will start in dozens of large cities in a year.

Willman is a member [of a California](#) and a [national trade organization](#) for home care suppliers that support repealing the bidding process.

Peter Cramton, an [economist at University of Maryland](#), has taken a strong interest in the bidding process and gathered data that shows Willman’s company is not alone in seeing a majority of its business disappear.

He compiled a report showing that for many categories of medical supplies in several cities, including Riverside, the market has [seen a major shake-up \[PDF\]](#).

In the Riverside County market for diabetic supplies, for instance, several suppliers that sold more than \$1 million worth of such items were losers in the bid process.

Cramton said he and [more than 160 economists \[PDF\]](#) from Harvard, Yale, University of Chicago and other institutions signed a letter warning Medicare that the bidding process is seriously flawed.

Among the flaws they noted is a lack of transparency in the process. Also, he said, firms are essentially encouraged to submit rock-bottom bids to win the option of signing a contract for the price they name.

[Cramton is advising lawmakers \[PDF\]](#) on ways to fix the system, because as it stands, he said, it won’t work. He warns that established firms will collapse under the race-to-the-bottom pricing approach and leave patients with no local firm to provide medical supplies and repair services.

“What we have is a fatally flawed system,” Cramton said. “It defies the imagination that (Medicare) can stick with this.”

Laurence Wilson, [a Medicare official overseeing \[PDF\]](#) the bidding process, said his agency is “very pleased” with how the nine-city rollout has gone and has no major changes scheduled before the new system starts in large cities.

“We’ve had very few complaints, less than 40 from beneficiaries and those were resolved quickly,” he said.

Wilson said the program is designed so 30 percent of the contracts go to small firms. He said Medicare officials are carefully watching the billing claims of people who get medical supplies to be sure there is no uptick in emergency room or doctor visits. So far they are pleased with what they're seeing, Wilson said.

Wilson also said the program is already saving Medicare 35 percent in Riverside and other early implementation cities over what it pays in other areas for similar medical supplies.

According to the inspector general who oversees Medicare, the program [has paid as much as \\$4,000 \[PDF\]](#) for wheelchairs that cost suppliers \$1,000. Similarly, audits also showed that Medicare paid \$7,200 for oxygen concentrators that cost suppliers \$600.

Inspector General Daniel Levinson has [also testified that \[PDF\]](#) medical supplies have been issued to people from companies with no store front and in the name of doctors who had no valid Medicare credentials.

Wilson said the new program requires bidders to submit credit history documents and tax filings, helping to protect the program from fraud.

"Fraud in the program has always been a problem and one we've been addressing vigorously in the last few years and even more vigorously now," he said.

[californiahealthline.org](http://californiahealthline.org), 26 May 2011

## **New Medicare Bidding Program Posing Issues for Medical Suppliers**

MAY 26, 2011

Some medical supply firms and economists are raising concerns about a new Medicare bidding program for medical supplies, [California Watch](#) reports.

### Background

Under the old system, firms seeking approval to sell medical supplies would submit paperwork to Medicare officials.

The new program requires firms to compete for bids to supply medical items to Medicare beneficiaries. Officials say the new program will reduce Medicare costs by \$27 billion over 10 years.

Before implementing the system nationwide, federal officials launched an early rollout of the program in nine communities across the U.S., including in the Riverside and San Bernardino county region.

### Concerns Raised

Medical suppliers and a group of economists have identified major problems with the new bidding program during its early implementation.

Esta Willman -- president of Medi-Source Equipment & Supply in San Bernardino County -- said the new system appears to encourage market consolidation favoring large companies that can supply medical products at lower prices.

Peter Cramton, an economist at the University of Maryland, is [advising lawmakers](#) that the new bidding approach could force out established medical suppliers, leaving patients without local firms to provide health care supplies and repair services.

Last year, Cramton and more than 160 economists [sent a letter](#) identifying problems with the bidding program, including a lack of transparency.

### Response From Medicare Officials

Laurence Wilson, an official overseeing the Medicare bidding process, said CMS designed the new bidding program to award 30% of contracts to small firms.

He said the agency is "very pleased" with the early implementation of the program in the nine selected regions. According to Wilson, the program already has reduced Medicare costs by 35% in Riverside and other implementation areas compared with what the program pays for medical supplies in other regions.

Wilson said officials are planning no major changes to the bidding process before rolling out the program in larger cities (Jewett, *California Watch*, 5/26).