

## **CBO Official: CMS' DME Comp Bid Plan Doomed, But Could Be Cheaply Fixed**

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A top Congressional Budget Office official said the Medicare competitive bidding program for durable medical equipment is seriously flawed, and although CMS has privately set up the first round bid in a way that makes it appear the program works, the agency is setting a precedent that will make it impossible to find the competitive market price for products in the future, which will lead to the program failing. CMS Medicare chief Jonathan Blum countered that effort is a reasonable success, but also said the agency is in “listening mode” for potential changes and will discuss the bidding program at a Payment Advisory and Oversight Committee meeting Tuesday (April 5).

Tom Bradley, CBO’s chief of Medicare cost estimates, said that the cost to fix the program would be small in comparison with how much it would cost to get rid of competitive bidding overall, which so far is the preferred option for most in industry and Congress. He spoke about the bidding program at an April 1 conference at which Maryland University Professor Peter Cramton demonstrated an alternative bidding structure that he and colleagues designed.

Bradley urged industry and other stakeholders to listen closely to what CMS says at the PAOC meeting and in other venues following PAOC. Bradley also said it is interesting that Blum said CMS is listening for potential changes, and pointed out that Blum did not say CMS plans to change prices set by the first round bid. However, by law Blum cannot say that prices will change.

The DME competitive bidding effort is being closely watched because the concept could be expanded to other programs that use competition to lower the price of products and services in Medicare. A DME competitive bidding program failure would make it difficult for CMS to move away from current government price-setting schemes, sources say, which in turn could thwart efforts to control Medicare costs at a time when costs are growing out of control.

Bradley said bidding auctions, designed correctly, find “sustainable clearing prices” for goods and services, but the program CMS designed likely will not work. For example, critics of CMS' effort note that the agency did not make bids binding, which encouraged low-ball bids because suppliers knew they did not have to actually supply products at those bid levels and were merely bidding to stay in the program, knowing that CMS would set the price.

CMS artificially compensated for the low-ball bids by choosing a greater number of bidders than it needed to supply the market, Bradley suggested. This raised the number of bidders in the program, which included higher bids that offset the overly low bids. Then CMS chose the median price among those bids as the price that suppliers had to meet if they chose to be in the program. That meant half of the winning bidders were asked to supply products at a price that was higher than their bids. This is essentially government price-setting, Bradley said, the very approach CMS was supposed to move away from with a competitive bid program.

CMS may have managed to set prices that will allow the program to continue, Bradley said, though it's impossible to tell. Either way, the resulting prices are much lower than the previous prices for DME -- the agency estimates the program will lower the cost of equipment subject to the program by 32 percent.

The problem, Bradley said, is that now bidders know the approximate government-set price so in the next round of bidding they will have no incentive to bid rationally. They know bidding low keeps them in the program and that CMS will manipulate the auction results to come up to a price similar to the price set in the first round. The first round included nine of the largest metropolitan statistical areas. The Affordable Care Act called for expanding the program to 80 areas next year, but CMS decided to expand it to 100 areas.

CMS is likely to entertain changing the program, Bradley said. But the important question is whether the agency waits too long or steps in early enough to save the program from failure, he added. It would not cost that much to change the auction because a proper auction would still drastically reduce the prices that Medicare pays for goods and services, according to Bradley.

But most DME suppliers want Congress to do away with competitive bidding, not fix it. In the House, a bipartisan bill to repeal competitive bidding (HR 1041) has more than 50 cosponsors, according to the American Association for Homecare, which supports the legislation.

Most of the industry representatives at the mock auction said they prefer getting rid of the auction process. They said that although the auction that Cramton designed is an improvement over the CMS auction, it still has problems. For instance, many suppliers probably do not know what their true costs are, and the mock auction that Cramton demonstrated on Friday assumed that suppliers know their costs.

However, academics and government officials from other agencies that have dealt with competitive bidding programs said industry has not offered an alternative to the current government price-setting approach and said auctions work when designed correctly. Evan Kwerel, senior economic advisor at the Federal Communications Commission, which has established competitive bidding programs across many industries, said the problems outlined by industry, such as the inability of small suppliers to define their costs, are not specific to auctions. -- *John Wilkerson* ( [jwilkerson@iwpnews.com](mailto:jwilkerson@iwpnews.com) )