



House Small Business Committee Holds Hearing on Small Supplier Concerns Over Medicare Competitive Bidding

The U.S. House of Representatives Committee on Small Business, Subcommittee on Investigations and Oversight, held a hearing October 31, 2007 about the potential impact of the Medicare competitive bidding program on small providers. Since the Centers for Medicare and Medicaid Services (CMS) proposed the rule to implement this program in 2006, small suppliers have raised concerns about their ability to effectively compete in this program, and their ability to stay in business if they are unable to win Medicare contracts.

Congress created a new competitive bidding program for medical equipment, prosthetics, orthotics, and supplies (DMEPOS) in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)(Public Law 108-173). CMS issued final regulations in April of this year implementing the program. The first phase of the program will begin in 2008 in ten of the largest metropolitan statistical areas (MSAs) in the country. The program will be expanded to eighty MSAs in 2009 and to additional areas after 2009.

The Committee heard testimony from a range of small suppliers, including the American Association of Homecare, the National Association of Chain Drug Stores, the Advanced Medical Technology Association, the American Podiatric Medical Association, the Pennsylvania Association of Medical Suppliers, and Health Aid of Ohio, Inc., expressing concern about the ability of small businesses to effectively compete under the program. In their written testimony, the witnesses detailed ways in which they believe the competitive bidding program may harm small providers, including:

- Smaller DME providers lack the economies of scale to negotiate lower prices or the physical size to cover an entire metropolitan statistical area (MSA).
- The methodology used to arrive at the “pivotal bid” that will set the cut-off for winning bids will lead to fewer and larger winners.
- Setting the contract price below the bid price for some successful bidders introduces a significant financial risk that will be more difficult for smaller suppliers to accept.
- CMS’ additional August 2007 proposal to impose a \$65,000 surety bond requirement on all Medicare DMEPOS suppliers makes it even more difficult for small suppliers to continue serving Medicare patients’ DMEPOS needs.

Some witnesses further questioned the appropriateness of applying competitive bidding to certain specialized supplies and services traditionally provided by small suppliers. For example, a representative from Health Aid of Ohio suggested that application of the competitive bidding process to complex rehabilitative services could not adequately account for the large service component necessary for fitting and modifying these items.

A representative from CMS also testified, explaining provisions to protect small suppliers included in the final rule implementing the program. The final rule sets targets that at least thirty percent of the winning suppliers be small businesses and that there be at least five winning suppliers in each product category, as well as allows small suppliers to form networks to enable them to provide services to an entire MSA. The panel of witnesses expressed concern that these provisions, while attempting to protect small businesses, will not adequately address their problems. The witnesses' written testimony described legal and logistical challenges to forming networks, and suggested that even with this provision and the thirty percent set-aside for small businesses, the program will radically reduce the number of providers and ultimately lead to less, not more, competition.

The written testimony of the witnesses at the hearing, entitled "Competitive Bidding for Durable Medical Equipment: Will Small Suppliers Be Able to Compete?," is available [online](#).

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