



Caring that Feels Right at Home



Issue Paper

Support H.R. 3790 to Protect Patients and End “Competitive” Bidding for Home Medical Equipment

Issue

Congressman Kendrick Meek (D-Fla.) introduced H.R. 3790 to end the Medicare “competitive” bidding program for home medical equipment and services (HME) because the program is fatally flawed. The program encourages “suicide bidding,” using economic coercion by forcing providers to submit unsustainable bids necessary to win a contract. Although Congress delayed the implementation of the selective contracting program in 2008 to allow for needed changes, the Centers for Medicare and Medicaid Services (CMS) ignored congressional intent and was not able or not willing to address the flaws that precipitated the congressionally mandated delay. H.R. 3790 protects patients’ access to medically required home medical equipment and services without raising Medicare spending. **The New England Medical Equipment Dealers Association (NEMED) and the American Association for Homecare (AAHomecare) urges support for H.R. 3790.**

H.R. 3790 Will Achieve Savings through Cost Offsets:

- 1) Reimbursement cuts were implemented in 2008 to pay for the bidding program delay:**
 - In 2008, HME payment rates were reduced by 9.5 percent nationwide for ALL providers to delay the botched program.
- 2) HR 3790 would cut HME reimbursements to offset elimination of the bidding program:**
 - In 2010, 2011, and 2012, the bill would eliminate the annual payment update (CPI-U) and reduce payment rates for all HME items by 0.25 percent in each year.
 - In 2014, the bill would eliminate the additional two percent increase in HME payment rates. All HME items would still receive the annual CPI-U update.
 - In 2015, the bill would eliminate the annual CPI-U update for all HME items and reduce payment rates for all HME items by 0.5 percent.

Congress Must Eliminate the Anti-Competitive Bidding Program:

It Sacrifices Care for Seniors and People with Disabilities

- Competitive bidding restricts access and choice for HME items and services.
- It will trigger a race to the bottom in terms of quality. Less expensive items will be provided to patients. With a loss of providers, expedient deliveries of items and services will be eliminated and Medicare costs will increase.

The Program Is a Job Killer, and It Is Anti-Competitive

- The bid program is anti-competitive. It reduces the number of competitors.
- 80 to 90 percent of HME service providers would have been barred from the Medicare program in the first round of bidding.
- We estimate that this program will result in approximately 100,000 job losses nationwide.

Not Cost-Effective, Not a Solution for Health Care

- The bidding program will increase Medicare costs. It disrupts the continuum and coordination of care between doctors, discharge planners, patients, and HME providers.
- It will lead to longer, more expensive hospital stays and more physician office visits, nursing home admissions, and emergency room visits.

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. Any provider not awarded a contract will be prohibited from providing bidded Medicare items for the length of the contract, typically a three-year period. The program was slated to go into effect in 10 MSAs across the country, expanding to an additional 70 MSAs in subsequent years. CMS has the authority to conduct additional rounds of bidding in other areas or apply the bid rates from one MSA to an area where bidding did not take place. This authority is of particular concern because CMS can apply the bid rates from the large MSAs in Round One to smaller urban areas or rural areas where the costs of providing HME items and services to patients may vary significantly. CMS began implementation of the program in 2007. However, because of fundamental problems with the design of the program, Congress delayed implementation for a period of 18 months in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) so that CMS could correct those problems. CMS has re-launched the program and ignored congressional intent, which was the basis for the initial delay. Therefore, we anticipate the same problems that plagued the initial roll-out of the program to re-occur.

The program fosters “suicide” bidding, which results in unsustainable payment rates: If a provider does not secure a contract, its chances of survival are nil. Since Medicare is the largest purchaser of HME items and services, CMS is using economic coercion to force unsustainable bids from homecare providers who are desperate to maintain cash flow in the hopes of staying in business.

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. 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** – Patients were confused about the restricted list of contracted home medical providers; hospital discharges were delayed; and unnecessary emergency room visits were triggered.
- **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 had little or no previous experience providing.
- **Suicide/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 practices if not awarded a contract. Winning contracts were viewed as commodities that could be sold once a bid was won.

Request

NEMED and AAHomecare urge members of Congress to contact Congressman Meek’s office to **co-sponsor H.R. 3790** to eliminate the competitive bidding program to protect patient access to quality home medical equipment and services. The Associations also urge Congress to **eliminate a provision in the health reform bill passed by the Senate, H.R. 3590, that would accelerate implementation of the bidding program** by adding 21 additional areas to Round Two and would mandate that bid rates be implemented in every Metropolitan Statistical Area (MSA) by 2016.