

## **CRE Interactive Site Offers Venue For Debate On Competitive Bidding**

Stakeholders hoping to influence CMS' restart of its controversial durable medical equipment competitive bidding effort now have a new outlet: An interactive, online "docket" unveiled Wednesday (May 27) by a veteran lobbyist who headed the Office of Management and Budget's regulatory affairs shop during the Reagan administration.

Jim Tozzi, now on the Board of Advisors for the Center for Regulatory Effectiveness, said CRE's [Interactive Public Docket](#) (IPD) will allow those affected by a rule to comment after the rule has been finalized, in addition to before a rule's implementation. "The world changes fast ... you can't have a static docket," he told *Inside CMS* during an interview about the Web-based docket.

The interactive docket allows a stakeholder to directly comment on another stakeholder's post on the Web site, to interact online in a "discussion forum" about a particular rule or regulation and to e-mail CRE with comments that CRE can then highlight or expand upon, he said.

The government's rulemaking process allows for comment on a proposed rule before it is finalized. But after a rule is done, Tozzi said, "information continues to be generated and the regulators would have access" to the most current information available through his interactive Web site. He said the site will also provide federal attorneys tools to access regulatory-based law.

**Tozzi, who started working at OMB during the Nixon administration, said he is in negotiations with a New York-based proprietary trading firm to provide an analysis** of the financial impact the CMS competitive bidding rule will have on the stock prices of individual DME manufacturers, companies and suppliers. Analyses such as this would be made available on CRE's Web site.

"When people look at the economic impact for rules, industry does one and the government does one, but the people who are very interested in getting it right are those that buy and sell recommendations to Wall Street," said Tozzi, who declined to reveal the name of the firm he is working with. He said that the firm will provide individualized data, but may not go so far as to estimate the cost of the program. The Congressional Budget Office estimated the competitive bidding program would save \$6 billion over five years.

Tozzi said that he chose to focus on the DME competitive bidding rule because of the push for health-care reform and because it has been so controversial. The Senate Finance Committee unveiled a series of proposals for health reform financing, which include “ensuring appropriate payments for Durable Medical Equipment such as oxygen or power wheelchairs.”

The competitive bidding program, mandated by the Medicare Modernization Act and delayed as part of last year's Medicare bill (MIPPA), was the subject of heated debate and even more heated lobbying to block the rule. Many senators and representatives who voted for the MMA sought to repeal the competitive bidding provisions of that law almost as soon as it was enacted (see *Inside CMS*, June 30, 2005). Jerry Lewis, the comedian and advocate for Muscular Dystrophy patients, was enlisted to exempt high-end rehab equipment, such as certain power wheelchairs, from being subject to the program (see *Inside CMS*, Oct. 18, 2007). CMS and JHACO officials said the program was handicapped by an organized campaign of innuendo and rumor aimed at derailing it, combined with a general malaise in the DME community regarding accreditation or suppliers (see *Inside CMS*, Oct. 18, 2007).

CRE's Web site will be a perfect tool for the complex situation created when Lincare, the Clearwater, FL-based DME supplier, was awarded a winning bid for the program only to have Congress step in and delay the program, said Tozzi.

Lincare said at the time that there were no “practical means” of recovering potential losses and has so far chosen not to sue over a potential breach of contract. Tozzi said that the Web site offers a forum for discussing that situation, as well as the hundreds of other ones that arise out of complex federal rules.

“That's the type of discussions that should be highlighted on our site before it goes to court,” he said, adding “there's no public discourse on that.”

Competitive bidding was delayed 18 months by MIPPA, which also required the HHS Office of Inspector General to conduct post-bidding audits; mandated that CMS hire an ombudsman to field complaints and submit a report to Congress about the program; and called for the Government Accountability Office to research the program's effect on patient access, as well as conduct a cost/benefit analysis. CMS is now moving forward with the program (see related story).

The law also requires that winning bidders disclose any subcontracting agreements. It excludes from competitive bidding complex rehab power wheelchairs, some “off the shelf” orthotics and some types of DME and other supplies that hospitals furnish to patients on admission or at discharge.

MIPPA sets a DMEPOS accreditation deadline of Oct. 1, 2009, and paid for the delay in the bidding program using a 9.5 percent payment cut for the items that were included in round one (see *Inside CMS*, Aug. 7, 2008).

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