

CMS Petitioned To Publish Financial Standards For DME Suppliers

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The Center for Regulatory Effectiveness is petitioning CMS to publish the standards for determining whether durable medical equipment suppliers are financially qualified to participate in the competitive bidding program. However, a CRE source said the organization would drop the petition if CMS were to allow all small businesses to sell their wares at competitively bid prices, instead of allowing only the winner of competitive bids to contract with the agency.

CMS should suspend the DMEPOS bidding program until it publishes the financial qualification policy, the CRE petition states.

The law requires that the financial standards for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) program be made public, the CRE petition states. Yet the final rule that describes Medicare's competitive bidding process for DMEPOS does not specify the financial standards, the CRE petition states. The final rule, published on April 10, 2007, states that CMS will consider "financial ratios, such as a supplier's debt-to-equity ratio, and credit worthiness," when reviewing a bidder's financial status. The CRE calls such standards "vague generalities." Thus companies are in the dark when they bid, and as the agency stated in the final rule, "If we conclude that a bid is not bona fide, we will eliminate the bid from consideration." CMS later issued an interim final rule on Jan. 16, 2009, that did not alter the financial standards from the 2007 rule. Comments to that 2009 interim measure nevertheless again centered on the lack of financial standards, but CMS has not responded to those concerns, according to the CRE's Bruce Levinson.

The lack of transparency puts companies in a difficult position, Levinson said. For instance, a company might take out a loan that disqualifies it from the DMEPOS program, but the company cannot know without published standards. Remaining eligible for the program might be more important to a company than the loan. At least the company would not bother wasting its time bidding if it were ineligible, he said.

Medicare beneficiaries would be hurt, too, he said. The CRE has heard from more than a hundred beneficiaries that fear losing their suppliers for critical products, such as oxygen machines. Often beneficiaries try multiple suppliers until they find one that works well for them. That

might mean finding a company that a beneficiary can count on to deliver an oxygen canister during power failures, Levinson said.

“Medicare patients may find it difficult to have confidence in the quality and integrity of agency services when critical care-related decisions are made via secret protocol,” the petition states.

Congress meant for CMS to be more specific, Levinson said. The Ways and Means subcommittee on health held a hearing on May 6, 2008, on the bidding process after the first round of DMEPOS bidding. According to a transcript of that hearing, the financial standards are the only part of the process that is not public. “The only thing that I would say that we have not disclosed as a matter of the bid process is exactly how we use the financial ratios in judging the financial viability of each bidder,” then CMS acting Administrator Kerry Weems said. “We have told them what financial documentation we need. We have told them the ratios that we would use, but we have not told them how that would be scored.”

Following the hearing, Congress amended the law governing the DMEPOS program to require that CMS specify financial standards that take small suppliers into consideration.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 created the DMEPOS Competitive Bidding Program. The MMA requires that Medicare replace the current fee schedule payment methodology for selected items with a competitive bid process. The intent is to do a better job of setting DMEPOS payment amounts. -- John Wilkerson