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## Tozzi: CMS Gets a Pass on Bid Program Information Requests

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WASHINGTON — The Office of Management and Budget is allowing CMS to violate the Paperwork Reduction Act regarding the [DMEPOS competitive bidding program \(/topics/competitive-bidding/\)](/topics/competitive-bidding/), according to the man who wrote the law in 1980.

Jim Tozzi of the Center for Regulatory Effectiveness, a regulatory watchdog organization, said Wednesday the organization had alerted the OMB to PRA violations in two of CMS' Information Collection Requests related to the Medicare bidding program. But the OMB ignored them.

"That was unbelievable. They were gross violations," said Tozzi, who knows the PRA very well — he wrote it and served as President Carter's chief lobbyist in getting the law passed 30 years ago, he said. Under the PRA, federal agencies must get OMB approval before requesting most types of information from the public.

In the first request, Tozzi said CMS failed to specify how data the agency collected would be used, nor did it include any burden estimates for some of the reporting and record-keeping requirements.

"They are making the small [home medical equipment] providers give all kinds of data — their financial statements ... a lot of data. And that takes them a lot of time," he said. Despite the mandate of the PRA, CMS did not give an estimate of how much time providers might spend doing paperwork to participate in DMEPOS competitive bidding.

"That's really a gross violation of the PRA," said Tozzi. "That's one of the pillars of it — you're supposed to report burden."

The OMB gave CMS clearance on the request, he said.

The second request involved a survey that, according to the CRE, "failed to accurately inform the public as to the purpose of the information collection and would not accomplish the study's statutorily mandated purpose, depriving Congress of key information on which to make Medicare-related decisions."

The CRE asked to further the study's purpose by adding a question to the 10-page survey, which included questions for Medicare beneficiaries such as: "What color is your oxygen tank?" and "Does the tube work?"

"We asked to put one question in: 'Did you change suppliers as a result of competitive bidding?'" said Tozzi.

The request was denied.

"What is OMB doing?" an outraged Tozzi asked. "This law that Congress passed gave OMB complete authority. It is one of the strongest authorities that OMB has and they walked away from the simplest thing."

HomeCare contacted the OMB about the issue, but so far has not received a response.

Tozzi stressed this was not a CMS issue, since the OMB has the power to force that agency to make changes.

"OMB should be held accountable," he said. "Your readers ought to write to OMB and ask, 'Is this right? What is going on?' and they should write their [legislators] about OMB."

Providers can read a CRE article on the issue called "Who's Watching the Watchdogs" on the [CRE home page](http://www.thecre.com/quality/2010/20100523_regweek.html) ([http://www.thecre.com/quality/2010/20100523\\_regweek.html](http://www.thecre.com/quality/2010/20100523_regweek.html)).

Earlier this week, Waterloo, Iowa-based VGM Group also suggested that providers contact the Small Business Administration Office of Advocacy and ask for an investigation by emailing [advocacy@sba.gov](mailto:advocacy@sba.gov) (<mailto:advocacy@sba.gov>).

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