

TAHCS Suit Seeks to Stay Competitive Bidding on Financial Standards Issue

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WASHINGTON — The Texas Alliance for Home Care Services and a Dallas provider filed a lawsuit today against the Department of Health and Human Services and the Centers for Medicare and Medicaid Services for failure to conduct notice and comment rulemaking in order to specify financial standards that providers must meet under the [DMEPOS competitive bidding program](/topics/competitive-bidding/) (</topics/competitive-bidding/>).

The suit, which was also filed on behalf of Dallas Oxygen Corp., was filed in U.S. District Court for the District of Columbia. Multinational Legal Services, the legal arm of the Center for Regulatory Effectiveness, is acting as attorney for the plaintiffs.

The complaint also alleges that HHS and CMS have violated the Freedom of Information Act by failing to publish the specific financial standards, and that CMS is evaluating the Round 1 rebid financial information submitted by bidders on an ad hoc basis without actually applying any specific financial standards.

TAHCS and several other organizations and individuals have called on CMS to release the financial standards to which the agency is holding bidders — and on which it will determine winning bids.

"On numerous occasions since the interim final rule, CMS has not provided standards despite requests from the public," said Barry Johnson, president of TAHCS.

According to attorneys, the suit asks the court to declare that HHS and CMS have violated the Administrative Procedure Act, FOIA and the Medicare statute. It also requests the court to:

- Vacate the current interim final rule;
- Require CMS to conduct proper notice and comment rulemaking on the proposed financial standards;
- Provide the financial standards it is currently using to the plaintiffs; and
- Enjoin the agency from further DME contracting until it issues a new final rule after considering public comments on the proposed standards.

Johnson said TAHCS is hoping that the suit can be settled before CMS' September target date for naming the winning bidders in the Round 1 redo, which is set to be implemented Jan. 1 in nine of the nation's largest MSAs.

"This suit represents the substantial flaws associated with competitive bidding. We trust that the court will recognize the merits of the case and rule in our favor," Johnson said.

"We are hoping to win and to bring increased transparency to health care reform efforts," added Bruce Levinson of the CRE. "We believe that our efforts, if successful, will benefit both beneficiaries and the entire [durable medical equipment] industry."