2015 – DME Policy Concerns

Binding Bid Implementation Date beginning on January 1, 2017.

Summary

Binding bid requirements passed through Congress and signed by the President in spring of 2015 in effort to solve the problem of "suicide bidding," where bad actors would submit substantially low bid prices to win the contract which artificially drives down prices. The actor would then decline their contract and was not held accountable to follow through on their bid. These suicide bids will eventually lead to market failure because of the flawed rates being used by CMS due to "suicide bidding" are unsustainable to the industry. Correction of this problem is a priority to the industry in order to preserve beneficiary access to the care they need, and for the Durable Medical Equipment industry to remain stable.

Problematic factor of Binding Bids Language passed in H.R. 2 – Medicare Access and CHIP Reauthorization Act of 2015.

Current binding bid language that was integrated in the SGR bill sets the requirement of a surety bond for providers to be eligible to bid "beginning not earlier than January 1, 2017, and not later than January 1, 2019."

This time period grants CMS the ability to conduct two more competitive bidding rounds before provider's bids are binding. This allows for a further reduction of reimbursements to a nominal rate which will make it extremely challenging for providers to stay in business to provide crucial medical equipment to beneficiaries.

> (a) Bid Surety Bonds.—Section 1847(a)(1) of the Social Security Act (42 U.S.C. 1395w–3(a)(1)) is amended by adding at the end the following new subparagraphs:
> "(G) REQUIRING BID BONDS FOR BIDDING ENTITIES.—With respect to rounds of competitions beginning under this subsection for contracts beginning **not earlier than January 1, 2017, and not later than January 1, 2019,** an entity may not submit a bid for a competitive acquisition area unless, as of the deadline for bid submission, the entity has obtained (and provided the Secretary with proof of having obtained) a bid surety bond (in this paragraph referred to as a 'bid bond') in a form specified by the Secretary consistent with subparagraph (H) and in an amount that is not less than $50,000 and not more than $100,000 for each competitive acquisition area in which the entity submits the bid.

Examples of Geographic Challenges of Current Competitive Bid Contract Winners

Salt Lake City, UT CBA

CPAP

Total Suppliers-	26
Average Distance (mi)-	**1023**
Less than 50 miles-	4
Out of State-	22

Oxygen

Total Suppliers-	14
Average Distance (mi)-	**698**
Less than 50 miles-	8
Out of state-	13

Omaha- Council Bluffs, NE-IA CBA

CPAP

Total Suppliers-	26
Average Distance (mi)-	**1023**
Less than 50 miles-	4
Out of State-	22

Oxygen

Total Suppliers-	14
Average Distance (mi)-	**698**
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Proposed Appropriations Language to Require CMS to Implement the Surety Bond Requirement for Contracts starting on January 1, 2017

Included Appropriations language would require CMS to implement the requirement of a submitted surety bond for providers to be eligible to bid beginning **on January 1, 2017.** Shifting the date to the beginning of the timeframe preserves the date already set in the current statute, as well as eliminate the bad actors that are currently not obligated to accept the contracts that they bid on.

> "The Secretary shall use appropriated funds for the Centers for Medicare and Medicaid Services to Implement the DMEPOS bid surety bonds requirement in section 1847(a)(1)(G) of the Social Security Act for contacts beginning on January 1, 2017."

Implementation of Competitive Bidding

The Medicare Modernization Act of 2003 (MMA) requires Medicare to replace the current HME payment methodology for certain items with a selective contracting process called the competitive bidding program for durable medical equipment, prosthesis and orthotic supplies (DMEPOS). The MMA allows the Secretary to contract with as few providers as the Secretary determines necessary to provide items and services in highly populated areas to meet the anticipated demand. Any provider not awarded a contract would be prohibited from providing previously bid Medicare items for a 3-year period. Background On January 1, 2011, Round 1 of competitive bidding was implemented in nine metropolitan areas. In 2013, 91 additional areas were impacted by the competitive bidding program. Since the program's implementation, serious problems have occurred such as, disruption to patient services, greater costs to Medicare due to longer hospital stays due to lack of equipment, and non-local providers servicing a geographic area with no operations in a bidding area were are awarded contracts which restricts accessibility to equipment beneficiaries need.

Rural Providers will be Facing Extreme Challenges in the Future.

Previously, competitive bidding rates were only used in the Competitive Bidding Areas (CBA), planned on January 1, 2016, CMS will begin the Rural Rollout that will cut the rural provider rates by nearly 50% over a six month timeframe. What providers must do to offset this cut is attempt to make up the difference in volume of customers, but in rural areas providers are unable to do so because of the clear population difference to metropolitan areas. This ultimately leaves rural providers two choices, close their doors for business, or consolidate the areas they serve, therefore opening up large areas that beneficiaries will no longer have access to service. CMS has added a 10% add on to those providers in what CMS considers to be a "rural area." This 10% add on is quite minuscule in comparison to the large cut rural providers will be facing in 2016 if it is not corrected.

Home healthcare is the most patient-preferred and cost-effective health care delivery system. Medicare beneficiaries deserve access to quality care and timely service.