

Competitive Bidding: An Update

LINDA COMEAUX, JUDY DAVIS, DON LAVANTY

Competitive bidding for Medicare Part B clinical laboratory services - it's been the most powerful unifier of the clinical laboratory industry due to the propensity to dilute the quality of laboratory services, impede access for beneficiaries, and remove any future laboratory competition within the demonstration sites. The first phase of the demonstration, called for in the Medicare Prescription Drug Improvement and Modernization Act of 2003, was to begin April 1, 2007. At this writing in February, the final plan is still pending approval of the Office of Management and Budget (OMB). No announcement has been made regarding the site location, the demonstration design, the application form, or other final plans. While ASCLS concurs that the current clinical laboratory fee schedule is outdated and needs revision, competitive bidding is not the most effective way to accomplish that goal.

Let's look at how CMS proposes the demonstration occur and at actions ASCLS and other laboratory groups are taking in opposition to the proposal. The demonstration will exclude hospital inpatient and outpatient testing and physician office testing, except when the facility acts as a reference laboratory and performs testing on patients from other facilities. Each laboratory performing \$100,000 of testing annually on beneficiaries residing in the bidding area will be required to submit a bid for each of over 1000 CPT codes reimbursed by the fee schedule. Laboratories must bid on all CPT codes but can form consortia with other laboratories. While multiple winners will be awarded, losing laboratories will not be able to perform Part B non-patient testing for the three-year duration of the demonstration. If the annual volume of a small laboratory exceeds \$125,000 and the laboratory did not submit a winning bid, that laboratory also cannot continue to perform Part B non-patient testing. The

site is to be selected from twenty-two possible metropolitan statistical areas (MSA), with a second demonstration site to be implemented in April 2008.

The clinical laboratory industry intensely opposes competitive bidding for a myriad of reasons, which include:

- Incentives exist for laboratories to bid less than cost to win, in order to maintain the market share when the demonstration ends and losing laboratories may no longer exist. When reimbursement is cut significantly, quality provisions are likely to be minimized in ways transparent to the purchaser but which affect patient care. In addition, the demonstration appears to rely on CLIA to maintain quality and the proposed application form requests little quality data to be considered when determining winning laboratories.
- Fewer laboratories will be providing services and beneficiaries may not have convenient access. In particular, most nursing home service is not profitable for large reference laboratories and is primarily performed by small, local laboratories, which are less likely to have winning bids in the demonstration. Thus, nursing home service could potentially be impacted.
- At a time when emphasis should be on simplifying the reimbursement mechanism, setting up a nationwide competitive bidding program where each MSA across the nation requests bids for over 1000 charge codes to set its own fee schedule would be administratively complex and ineffective. Furthermore, using the winning bid data to reset the current laboratory fee schedule could result in unrealistically low reimbursement.
- The industry is concerned that insufficient time will be allowed, once the site is announced, for laboratories to develop bids, set up contractual networks with other laboratories, and make needed IT changes. In contrast, the Medicare competitive bidding demonstration for durable medical equipment allowed over eight months from site announcement to bid deadline.

Washington Beat is intended to provide a timely synopsis of activity in the nation's capitol of importance to clinical laboratory practitioners. This section is coordinated jointly by Judy Davis and Linda Comeaux, Co-chairs of the ASCLS Government Affairs Committee; and Don Lavanty, ASCLS Legislative Counsel. Direct all inquiries to ASCLS, (301) 657-2768 ext. 3022, (301) 657-2909 (fax); or mail to ASCLS, 6701 Democracy Boulevard, Suite 300, Bethesda MD 20817, attn: Washington Beat.

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Table 1. Members of Congress from potential MSA selection sites who sit on committees of jurisdiction over Medicare spending

MSA	House members	Senate members	MSA	House members	Senate members
Birmingham AL	Artur Davis Spencer Bacchus		Las Vegas NV	Shelley Berkley Jon Porter	Harry Reid
Phoenix AZ	John Shadegg Ed Pastor Harry Mitchell	John Kyle	Buffalo NY	Brian Higgins Louise Slaughter	Chuck Schumer
San Bernadino CA	Joe Baca Ken Calvert Mary Bono		Rochester NY	Louise Slaughter Thomas Reynolds	Chuck Schumer
Sacramento CA	Doris Matsui John Doolittle		Cleveland OH	Stephanie Tubbs Jones	
San Diego CA	Brian Bilbray Duncan Hunter Susan Davis		Columbus OH	Pat Tiberi Deborah Pryce David Hobson	
San Jose CA	Anna Eshoo Michael Honda Zoe Lofgren		Oklahoma OK	Mary Fallin	
Denver CO	Diana DeGette Ed Perlmutter	Ken Salazar	Pittsburgh PA	Michael Doyle Tim Murphy	
Jacksonville FL	Ander Censhaw Corrine Brown		Nashville TN	Jim Cooper Bart Gordon	
Orlando FL	Ric Keller Tom Feeney Corrine Brown		Austin TX	Lloyd Doggett Lamar Smith Mike McCaul John Carter	
Tampa / Clearwater FL	Gus Bilirakis Bill Young Katherine Castor		San Antonio TX	Charlie Gonzalez Lamar Smith Henry Cuellar	
New Orleans LA	Bobby Jindal William Jefferson		Seattle WA	Norman Dicks Adam Smith Jim McDermott	Maria Cantwell
			Milwaukee WI	Gwen Moore	

Bold: Member of House Ways and Means or Energy and Commerce Committees

Underlined: Subcommittee members

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Although plans are pending for the demonstration, President Bush's budget proposal for FY 2008 calls for nationwide competitive bidding for clinical laboratory services, as part of the plan to balance the federal budget by 2012. Competitive bidding is projected to produce a five percent savings in these payments. Although ASCLS does not support the demonstration, we strongly oppose implementing competitive bidding on a national basis without a demonstration first.

ASCLS and members of the Clinical Laboratory Coalition (CLC) have submitted comments on the proposed application form, submitted a list of questions and concerns to

CMS, and met with CMS representatives several times. The new Democratic congressional leadership appears to be less supportive of competitive bidding than their predecessors. The CLC is now meeting with members of Congress, listed in Table 1, from potential MSA selection sites who sit on committees of jurisdiction over Medicare spending. ASCLS is also contacting ASCLS members who live in these districts and our members discussed competitive bidding with members of Congress in our Capitol Hill visits at the March Legislative Symposium. Many important competitive bidding issues remain on the table, so stay tuned to ASCLS and other professional resources for the latest developments.



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