

Competitive Bidding – the Continuing Saga

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Competitive bidding is an approach that has long been favored by Congress to attempt to control costs in a variety of arenas by allowing the marketplace to competitively determine prices. Some would argue it is, on the surface, the “American Way”. However, each time this approach has been suggested to control the cost of laboratory services the clinical laboratory community has staunchly argued that while competitive bidding for durable goods may be effective, it will not work for services that are provided by highly skilled professionals in diverse settings to even more diverse populations.

For many years a competitive bidding strategy was discussed by Congress, but the laboratory community effectively lobbied against it. However in 2003, in the wake of public pressure over provision of prescription drugs for Medicare recipients, the Medicare Prescription Drug Improvement and Modernization Act (MMA) was passed by Congress and included a mandate for a competitive bidding *demonstration project* for clinical laboratory services. The proposed purpose of the project was to determine if market driven competitive bidding could be used to decrease costs to the Medicare program to provide quality clinical laboratory services. Although the project was to begin in April 2007, the complexities involved in the development of bidding guidelines have delayed the implementation.

The current mechanism for reimbursing laboratories for services provided to Medicare beneficiaries is a fee schedule that was established in 1984. Although most laboratory stakeholders recognize that the fee schedule is outdated and irrational based on today’s technology, they are united in their belief that competitive bidding will be disastrous for the laboratory community as a whole and, more importantly, for the patients and the healthcare providers they serve. The Spring 2007

Washington Beat column enumerated the reasons the clinical laboratory industry opposes competitive bidding

The Clinical Laboratory Coalition (CLC), a group which represents a large number of laboratory stakeholders including ASCLS, has worked to educate members of Congress regarding the potentially negative impact of competitive bidding and to suggest more viable mechanisms for updating the laboratory fee schedule. In addition, they have attempted to work with the Centers for Medicare and Medicaid Services (CMS) to provide feedback regarding the proposed demonstration project.

In early July, CMS released the Medicare clinical laboratory competitive bidding demonstration project draft bidders’ package (available on the CMS website: www.cms.hhs.gov) which contains specific information regarding who will be required to bid and the bidding guidelines. CMS conducted an open door forum on July 16 in Baltimore, Maryland to discuss the draft bidders’ package. The timing of the open door forum coincided with another CMS meeting on coding and the ASCLS and AACC Annual Meetings and Laboratory Exposition, making participation by many stakeholders difficult. ASCLS Executive Vice President Elissa Passiment and Government Affairs Committee Chair Judy Davis participated from the ASCLS meeting site by phone.

The draft bidders’ package left many questions unanswered. Due to the escalating concerns of the laboratory industry, and particularly by small laboratories, the House of Representatives Committee on Small Business conducted a hearing on July 25, 2007. Committee members heard testimony that resulted in committee chairwoman, Nydia Velazquez of New York, concluding that if the competitive bidding project moves forward as designed it could result in small laboratories being hindered or excluded from providing timely, quality laboratory services. This would have an adverse effect on some of the most vulnerable patients in small communities, in rural settings, and in skilled nursing facilities.

As a result of the hearing on August 4, 2007 Representative Velazquez introduced HR 3453, the Community Clinical Laboratory Fairness in Competition Act of 2007, which

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amends title XVIII of the Social Security Act to repeal the Medicare competitive bidding demonstration project for clinical laboratory services.

At the time of the writing of this article, HR 3453 has been referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, the Judiciary, and Small Business. There is currently no companion bill in the Senate. ASCLS members have been asked

to contact their representatives to urge them to support and sign on to HR 3453.

Meanwhile, CMS is proceeding with plans to implement the clinical laboratory competitive bidding demonstration project by spring of next year. The first demonstration site is to be announced this fall. The final bidders' package is also to be released this fall with bids due presumably before the end of the year.

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