Historical Perspective on Competitive Bidding Law

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Medicare Modernization Act (MMA) of 2003

- Added a voluntary prescription drug benefit to Medicare with drug prices set by a prescribed competitive process
- Covered new preventive benefits, including screening for diabetes
- Provided a disease management program for those with chronic illnesses
- Improved rural care and Medicare Advantage
- Means-tested Medicare premiums
- Provision to phase in a CMS-designed competitive bidding program for DME, which now includes diabetes test supplies
The CMS Final Rule
Federal Register — 2007

- A noble objective: To assure access to quality DMEPOS product and service using competition to achieve savings to our seniors and Medicare

- The rules of competition were not spelled out in the law as it was for the Part D and CMS adopted a totally different structure than Member anticipated

- CMS’s program design (ie, non-binding bids, prices based on median of bids, etc.) coupled with the total lack of transparency about crucial detail and lack of enforcement of winner responsibilities, created severe access issues

- The law gave CMS authority to limit the number of suppliers with no obligation to disclose rationale, preventing early identification of the problems created by their program design

- The law allowed no administrative judicial review
The Reality

2009

• Implementation by CMS went very badly

• Congress stopped the process after the contracts had been signed ... unprecedented

• MIPPA delayed the program and required changes, including for diabetes supplies

2010

• Economic and auction experts become alarmed by program design

• Old problems resurfaced

• 167 write W&M Chairman Stark

• Predict a bad outcome

• Request the government fix the flaws with modern design
What They Said

- What an awful design.
- This sounds like a real disaster.
- A problem waiting to happen.
- Will just lead to massive fraud and corruption.
- Similar bidding programs have been used in Europe with disastrous results!
- Seemingly designed to guarantee failure.
- Will be an embarrassment to the government.
- So many obvious flaws it is difficult to conceive that CMS is pushing ahead with it.
The Reality

2011

- January - CMS rolled out the program in nine CBAs
- Diabetes suppliers reduced over 95% in the 9 CBAs (500 to just 20)
- Instructions from MIPPA largely ignored, especially with diabetes
- Voluminous anecdotal evidence of problems emerge
- June - 244 experts write the White House raising great concerns with program design
- Flaws can be "easily fixed" with modern auction methods
- Market failure predicted
TODAY

2013

- CMS steamrolls ahead - July 2013 - program went nationwide for diabetes
- Suppliers now reduced by 98%...just 2% left (18 of about 1,000)
- Retail suppliers shrink as mail order price was imposed on them in 2014
- Price set by CMS slashes payment by 70% for all DTS suppliers

2016

- July 2016 - another 3-year round will begin
- CMS has announced suppliers to be reduced another 50% - only 9 contracts
- Price set by CMS will slash payment another 20%
- New pricing policy – no adjustment for inflation, maximum bid is last year’s price