

"Medicare told me they resolved the problems from last year's competitive bidding program, but if you hear differently at the PAOC meeting, I want to know about it"

That's what Congresswoman Ginny Brown-Waite (R-Lake County, FL), who serves on the Health Subcommittee of Ways and Means told me on Wednesday afternoon during a meeting in her Washington office.

Unfortunately for her constituents in the round one Orlando MSA, little has changed. The Competitive Bidding program in DMEPOS is still a bid without financial accountability that will still allow unqualified companies to low ball bid to achieve their goal: not the ability to continue serving patients, but to sell their company after winning the bid.

Licensure

One of the only significant changes is that companies must now have State Oxygen and Home Medical Equipment licenses in place before they bid. CMS will require that bidders have a license in the state that you are bidding in, or they will be disqualified. This was also required in the 2007 bid. It was not made clear whether the license would be sent with hardcopy documents or if CMS would check each applicant against state records. Last year nine of the forty-four oxygen bid winners in Florida's Miami and Orlando MSAs did not have Medical Oxygen Retailer licenses from the Florida Department of Health. Additionally, CPAP and Enteral Feed bid winners from California, Ohio, New York and other states, failed to obtain a Home Medical Equipment License from Florida's Agency for Health Care Administration. **Lowest Bidder Selling Out to the Highest Bidder**

Another fundamental flaw which still exists is that companies can still sell their companies and transfer their bid contract to the new owners. This resulted in companies, which had no intention and ability to provide products and services to patients, offer unrealistic low bids with the intent of selling a worthless business for something. In the Polk County Demonstration Project a large national company bought a bid winner and the concept snowballed from there. Last year bid winners received calls from desperate bid losers asking to buy their companies. When common sense revealed that bid winning business could not survive with an average of 26% cuts, bid winners began calling existing companies announcing that their bid winning businesses were now for sale if anyone was interested.

When the topic came up at the meeting, CMS officials explained that Medicare providers will always have the right to sell their companies. One of the first suggestions from the public comments was by a woman from a Round One MSA. She relayed a similar story about her experiences and suggested that if the program continues, bid winners would not be allowed to transfer their contract to the new owners. I applauded this idea and feel it would help keep bids

at a more honest level.

No History of Providing Products and Services

This was a topic that nearly the entire committee questioned: "How can a company that has never provided products and services before be allowed to win a bid?" PAOC members commented that, "You don't want on the job training when it come to products that provide life support"

The most basic argument floating around the table was that these companies would place unrealistic low bids in order to win, without knowing the requirements of providing expensive services. When asked for an explanation why this still existed, the CMS representative answered "It will increase competition"

During the public comment period, I used my time to talk about how the new CPAP requirements would affect the uninformed bidder. I explained that a company that does not currently provide CPAP would most likely choose to bid based on the least expensive CPAP machine available. The new policy which began in November requires a premium CPAP device with download capability, multiple visits to the patient's house to assure compliance and additional time spent downloading reports and communicating with the doctor to make sure that the patient is using the device according to the new requirements. Obviously the company, which has never provided CPAP before will bid at a much lower rate based on a single delivery of the least expensive CPAP compared to the actual provider of premium products and necessary services.

Transparency

By the end of the day other issues were brought up about needing only one year of financial records compared to three and new subcontracting rules that require subcontractors to be accredited, but providers located hundreds of miles outside an MSA could still win a bid without having any subcontract agreements in place proving they could service an area.

The underlying problem is that the members of the PAOC or attendees still did not know how CMS evaluates a company's ability to cover an area, how capacity is calculated and what constitutes a valid bid that a business could live with without declaring bankruptcy. When asked CMS answered that they did question a bid that they thought was too low, but the bidder provided an invoice to prove they could purchase a product at that price. The question about providing the product to the patient, training the patient, billing Medicare, and providing maintenance and service was never discussed.

The PAOC did a commendable job in trying to make the program work, but by the end of the day the only thing that was clear is that the outcome from this version may be another rebid of Round One in 2011.