

Repeal and Reform Legislation for Medicare DME Auctions

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Efficient auctions are better than repeal alone

- Repeal alone is not a coherent strategy
 - Eliminates badly flawed auction, which resulted in arbitrary pricing and winners
 - ✘ Adversely impacts budget
 - ✘ No sustainable pricing mechanism
 - ✘ High regulatory uncertainty from non-market prices
- Repeal and replacement with an efficient auction is a coherent strategy
 - Eliminates badly flawed auction, which resulted in arbitrary pricing and winners
 - Improves U.S. budget
 - Sustainable pricing mechanism
 - Efficient providers are able to earn profits and grow
 - Regulatory risk is minimized
 - Market gradually evolves to efficient market structure
 - Medicare beneficiaries get quality services at lowest sustainable price
 - All stakeholders benefit except inefficient providers

Going forward

- Draft legislation for efficient Medicare auctions
- Educate stakeholders on benefits of an efficient auction
 - April 1, Medicare auction conference
 - May 24, Hill briefing on Medicare auctions
 - Hill and administration briefings throughout the summer
- CBO score of an efficient auction legislation, recognizing savings
- Pass bipartisan legislation to repeal and replace with an efficient auction as part of deficit
- Design and development until first-half 2013
- Implementation of initial auction in first-half 2013 with contracts starting 1 July 2013

Savings to taxpayers from
efficient auction vs. status quo

Hidden costs of current CMS approach

- Failure of supply
 - Substitution from lower cost DME supply to hospital supply, possibly after complications
- Destruction of efficient suppliers (inefficient market structure)
- Higher costs following failure of market
- Substitution from low-priced mail order diabetes to high-priced pharmacy diabetes
- More costly administration of current system
 - Handling of problems, avoiding shortage, higher fraud

Reduced costs from efficient auction

- Least-cost sustainable prices
- Promotion of efficient suppliers (efficient market structure)
- Promotion of innovation through product optimization
- Elimination of products with poor benefit/cost performance
- Expansion of products with high benefit/cost performance
- More rapid introduction of electronic systems and paperwork reduction

Repeal and Reform Statutory Language

Statutory language: Repeal and replace

- Repeal the Round 1 (Rebid) and restore prices to the administrative fee schedule effective on the day this new law is enacted
- Develop efficient auctions as detailed on the following pages

Note: The following has more detail than would appear in the actual legislation. This detail is provided to give the reader a better sense of how an efficient auction would work. Some of the specific numbers given are meant as examples and could be adjusted in the actual legislation. Further details are provided in

[“Auction Design for Medicare Durable Medical Equipment,”](#)

Working Paper, University of Maryland, March 2011. [[.pptx](#)]

Responsibilities of the Secretary

- The Secretary shall, through the Office of Health Reform, and within three months of bill passage through a competitive process, contract with an Auction Expert for a four-year term to assist the Secretary in the design, implementation and functioning of all competitively bid markets and products
 - Minimum qualifications of the Auction Expert
 - PhD education in field directly relevant to auction design (economics, business, engineering);
 - At least five years experience in the design and implementation of complex auction markets with total volumes in excess of \$10 billion
 - At least three references indicating successful design and implementation of auction markets
 - Auction Expert may not be a current government employee, a current or former CMS employee, nor a current or former CMS contractor that has been involved in competitive bidding or administrative pricing work before the passage of this law
- The Secretary shall provide the Auction Expert with access to all confidential information on the relevant markets

Responsibilities of the Secretary cont.

- The Secretary shall, through the Office of the Assistant Secretary for Planning and Evaluation, and within three months of bill passage through a competitive process, contract with a Market Monitor for a four-year term to oversee the design, implementation and functioning of all competitively bid markets and products
 - Minimum qualifications of the Market Monitor:
 - PhD education in field directly relevant to auction design (economics, business, engineering);
 - At least five years experience in the design and implementation of complex auction markets with total volumes in excess of \$10 billion
 - At least three references indicating successful design and implementation of auction markets
 - Market Monitor may not be a current government employee, a current or former CMS employee, nor a current or former CMS contractor that has been involved in competitive bidding or administrative pricing work before the passage of this law
- The Secretary shall provide the Market Monitor with access to all confidential information on the relevant markets

Responsibilities of the Secretary cont.

- The Secretary shall ensure that the auction design is developed through a collaborative, transparent process, involving all stakeholders (DMEPOS suppliers, CMS, beneficiaries), under the guidance of the Auction Expert and the oversight of the Market Monitor, to establish market rules to set least-cost, sustainable, competitively bid prices, and protect beneficiary access to and choice of quality DMEPOS products, services, and suppliers
- The Secretary shall ensure the design and development process is then implemented according to the following timeline:
 - In the first-half of 2013, auction a representative 20% of the market with two-year contracts starting on 1 July 2013, with the remaining 80% of the market served by any qualified provider supplying DMEPOS at the prices determined by the auction, adjusted for regional characteristics
 - In the first-half of each year thereafter, auction a representative 10% of the market with two-year contracts starting on July 1 of the year of auction, with other market areas not under contract, DMEPOS is supplied by any qualified provider at the prices determined from the auction, adjusted for regional characteristics

Responsibilities of the Secretary cont.

- The Secretary shall ensure that the market has these basic features
 - In all regions currently under auction contract, DMEPOS supply shall be limited to auction winners, with the sole exception of a brief product-specific grandfathering period set by the Secretary on recommendation of the Auction Expert with oversight of the Market Monitor
 - The adjustment of prices in regions not under contract shall be based on a statistical model, using best practice and science, to account for region-specific cost differences among regions for each product category
 - The statistical model used to adjust prices in regions not under contract shall be set by the Secretary on recommendation of the Auction Expert with oversight of the Market Monitor, with price adjustments made on an annual basis; the model shall be reviewed and improved every two years
 - The capacity of each bidder for each product category in each region shall be set in an objective and unambiguous way based on historic supply
 - For each bidder who have not supplied in the product-region over the last three years, capacity is set at ½% for product-regions with more than 40 qualified new entrants and 1% for product-regions with less than 40 qualified new entrants
 - For each existing supplier in the product-region, capacity is set at the larger of the new entrant capacity or its weighted share of supply for the product category in the region in the prior 3 years:

$$\frac{4}{7}Q_{year-1} + \frac{2}{7}Q_{year-2} + \frac{1}{7}Q_{year-3}$$

Q_y = share of volume in category supplied in year y as a percentage of the total volume

Responsibilities of the Auction Expert

- The Auction Expert, within two months of appointment, shall develop a draft auction design; the draft design provides the starting point of the collaborative rule-making process
- The Auction Expert shall lead a design conference, convened by the Secretary within six months of the Auction Expert's appointment, including DMEPOS suppliers, beneficiaries, CMS and other agency personnel, to collaboratively design an efficient auction consistent with best science and practice
 - The design conference shall include a demonstration of the preliminary auction design, in which attendees participate in a mock auction
 - Working groups on key issues shall be formed by the Auction Expert
 - Each working group shall provide a report to the Auction Expert within two months of the design conference, summarizing the outcome of the group's deliberations
- Within three months of the design conference the Auction expert shall develop a final auction design recommendation
- The Auction Expert shall lead a bidder conference in advance of each auction to educate participants on all aspects of participation in the market
- The Auction Expert shall report directly to the Secretary of Health and Human Services

Responsibilities of the Market Monitor

- The Market Monitor shall review the draft auction design within one month of its release
- The Market Monitor shall participate in the design conference and provide a review of the design at the conference
- The Market Monitor shall provide quarterly reports, beginning with the report on the draft design, to the Secretary on the development and operation of the market, identifying potential problems and recommending solutions
- The Market Monitor shall review the final auction design recommendation within one month of its release
- The Market Monitor shall provide an annual report to the Congress on the development and operation of the market, identifying potential problems and recommending solutions
- The Market Monitor shall report directly to the Secretary of Health and Human Services

Transparent market

- The DMEPOS market shall be established by the Secretary upon recommendation of the Auction Expert and review by the Market Monitor
- To ensure Transparency, all elements of the market, from financial and performance standards, to capacity allocation, to bidding rules, to winning awards, to performance accountability policies, shall be publically disclosed, with one exception:
 - Following each round of an auction aggregate supply will be revealed rather than the individual bids; however, individual bids will be disclosed within one day of the conclusion of the auction
- State-of-the-art methods will be developed to promote the timely disclosure of essential market elements in simple and powerful data bases, including the use of data visualization tools to access data
- The annual auction shall occur over the Internet using a commercial auction platform over one or more days, but not more than five days total, with about 4 to 8 rounds of bidding per day

- Timing of required minimum elements to be disclosed

Three months before auction date:

Detailed unambiguous auction rules, including

- Financial and other qualification requirements
- Algorithms for determining winners and prices as a function of bids
- Performance obligations, guarantees, and penalties
- Products and product and categories
- Lead product for each category
- Regions to be auctioned

Two weeks before auction:

Identity of qualified bidders eligible to participate, including

- Bidder capacities
- Bidder eligibility by product-region
- For each bidder and product-region, the price, reported at qualification of each product for the region, relative to the lead product (that is, the price of the lead product = 100%)
- The price index for each product-region is formed as the capacity weighted-average of bidder reports of relative prices at qualification, and is used to determine the price of each product in product category, as the market clearing price of the lead product times the price index for the particular product-region

- Timing of required minimum elements to be disclosed (cont.)

During auction round:

- Time of end of round
- History of prior rounds including aggregate supply at end of round price for each product-region by round

Within fifteen minutes of end of each auction round:

- Round results, including
- Aggregate supply for each product-region at end of round price
- The bidder's own supply for all prices from start price to end of round price for each product-region
- Revised schedule of rounds for the rest of the bidding day

Within fifteen minutes of the end of the final auction round:

- Final results, including
- A list of winning bidders and market clearing prices for each product-region
- For each bidder and each product region, the bidder's supply for all prices from the start price to the market clearing price

Within one week after the end of the final auction round:

- List of performance guarantees received from each winning bidder, including a list of winners who failed to provide performance guarantee within one week of auction close and therefore forfeited their bid guarantee

Efficient market

- To ensure long-run efficiency with least-cost sustainable competitive prices, the auction shall
 - Use the market clearing price (the first excluded bid in each product-region) for each product-region
 - Optimize products consistent with an efficient market
 - Products regularly reviewed for benefit/cost performance
 - Innovative products regularly reviewed for benefit/cost performance
 - Benefits are based on latest clinical evaluations, including
 - both patient wellness support and healthcare cost reduction
 - input from clinicians experienced in each product category
 - Products will be grouped into categories that reflect strong complementarities among products, for example all the parts of a standard mobility device are in the standard mobility device product category
 - Identification of lead product for each product category that is directly bid in auction

Protections for participants

- To ensure appropriate protection of beneficiaries and suppliers of quality DMEPOS products and services, the auction design must include:
 - Rigorous qualification standards to bid and supply, consistent with best-practice in private-sector procurement of similar medical goods and services
 - Binding bids
 - From bidders, a deposit or letter of credit of 10% of expected annual volume as a bid guarantee
 - Clear obligation of performance by winners
 - From winners, a deposit or letter of credit of 10% of expected annual volume as a performance guarantee
 - Beneficiary choice is maintained and encouraged to the extent consistent with an efficient auction
- Market structure
 - Limit on supplier volume to assure long-run competition in the market
 - No supplier in any product-region can win a capacity greater than 20%
 - Small businesses with historical total volumes less than \$8 million shall provide at least 20% of capacity of each product-region