

Multiple Bid Submissions for Medicare Advantage and Prescription Drug Plans

To ensure understanding of the CMS review process prior to the June 6th bid submission date, CMS is reposting its guidance offered on May 4, 2005 relating to multiple bid submissions. In the May 4 guidance, CMS indicated that 4 or more bids for basic benefit packages in one service area (or fewer if the demographics of the service area would not reasonably support the required minimum enrollment in each plan) might fail our reasonableness test. As we implement the historic changes of the MMA that will incorporate competition and many more private plans into the Medicare program, it is also critical that we do not allow discrimination in benefit structures for either MA or prescription drug plans. In addition, an excessive number of benefit options in a service area or region may confuse our beneficiaries. We are re-issuing our guidance on multiple bids in order to encourage a strong and successful competitive market.

May 4 Guidance:

Question: Can MA regional plans submit more than one bid for basic benefits and subsequently withdraw some or all of them?

Answer: In the case of a multiple bid submitter that, once the MA regional benchmarks are announced, withdraws some or all of its bids in obvious deference to the benchmark announcement, CMS would—with few exceptions—have to consider any organization taking these actions as either grossly incompetent, failing to negotiate in good faith, or both. This may result in CMS—

- ✓ Disapproving the remaining bids for the current year, or
- ✓ Deciding to terminate an organization's contract for the contract year pursuant to 422.510(a), or
- ✓ Deciding to non-renew an organization's contract for the following contract year pursuant to 422.506(b).

This would allow CMS to either terminate or non-renew a contract if a sponsor no longer meets the requirements of Part 422 for being a contracting organization.

Finally, in general, CMS would be concerned if an organization submitted multiple MA plans in an area and then withdrew a number of these bids.

Question: Can Part D plan sponsors submit more than one bid (or formulary) for basic benefit packages, and can they subsequently withdraw some, or all of them?

Answer: The MMA does not prohibit organizations from submitting multiple bids, nor does it disallow bid withdrawals. We anticipate that, especially in year one, there may be a business case for submitting multiple bids and packages for basic benefits. Certain

variations in benefit design and management may be reasonable since the benefit design preferences of this population are largely untested. However, CMS will closely review variations in benefit design between multiple bids offered by the same sponsor to ensure that they represent appropriate and meaningful differences.

Consequently, CMS will review the set of bids received from a Part D sponsor as a whole. We will apply a reasonableness test to all multiple bid submissions to determine examples of a strong likelihood of incompetence and/or ‘gaming,’ including, but not limited to:

- ✓ Multiple bid submissions that would fail a reasonableness test (i.e., 4 or more bids for basic benefit packages in one service area, or fewer if the demographics of the service area would not reasonably support the required minimum enrollment in each plan.
- ✓ Multiple bid submissions based on different formulary drug lists.
- ✓ Multiple bid submissions based on different levels of utilization management control.
- ✓ Multiple bid submissions that reflect a significant unexplained variation in costs between the plans, particularly between plans offered to the group versus the individual market.

CMS will negotiate with plan sponsors to ensure that any multiple bids and benefit packages reflect appropriate and meaningful variations in benefits.

However, in the case of a multiple bid submitter that, once the benchmark is announced, withdraws some or all of its bids in obvious deference to the national benchmark announcement, CMS would—with few exceptions—have to consider any organization taking this actions as either grossly incompetent, failing to negotiate in good faith, or both. This may result in CMS—

- ✓ disapproving the remaining bids for the current year, or
- ✓ deciding to terminate an organization’s contract for the contract year pursuant to 423.504(b)(4), or
- ✓ deciding to non-renew an organization’s contract for the following contract year pursuant to 423.504(b)(4)

on the basis that entities must have "administrative and management arrangements satisfactory to CMS in order to receive a contract," as well as pursuant to 423.509(a)(3) and 423.507(b)(1)(i) which allow CMS to either terminate or non-renew a contract if a sponsor no longer meets the requirements of Part 423 for being a contracting organization.