

**Don't Forget to Save Medicare:  
Competitive Pricing, Not Price Controls**

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# Medicare's Attempts to Implement Competitive Pricing<sup>1</sup>

The table below summarizes the most important competitive pricing efforts of the last 25 years. During that period, there have been at least 10 identifiable competitive pricing demonstrations (admittedly, the criteria are somewhat subjective), in addition to the implementation of competitive pricing for the Part D drug benefit. These are multi-year projects in research, design, consultation, and implementation. Thus, while there are periods of more and less intense activity, competitive pricing efforts have been a fairly constant preoccupation of HCFA/CMS.

## Past Competitive Pricing Attempts and their Fate (in Alphabetical Order by Medicare Benefit)

Period	Demonstration	Description	Results
1991-1996	Coronary artery bypass graft (CABG) demonstration	Negotiated bundled payment for Part A and B services for CABG, which allowed participating organizations to create payment approaches that rewarded physicians for reducing the cost of care.	HCFA implemented the demonstration initially at four sites in three cities. Three additional sites were later added. Pressure from providers significantly diluted the negotiation model— in the end the model became a discounted bundle of Part A and B services. CMS estimated the demonstration saved Medicare nearly \$40 million (10 percent) over 10,000 CABGs performed at seven sites. HCFA planned to expand the Bypass Demonstration project in March of 1996; however, due to budget constraints caused by the Y2K issues and the Balanced Budget Act of 1997, HCFA put the project on hold. The demonstration gave rise to the 'Centers of Excellence' program, based on 'virtual bundling' within FFS payments. <sup>2</sup>
1991-1996	Cataract surgery alternate payment demonstration	Negotiated bundled payment for Part A and B services for cataract surgery	Industry exerted constant pressure during the design of the demonstration, which led to the elimination of most of the competitive features. Peer pressure and a local boycott reduced participation. National and local provider associations sued to stop the demonstration, claiming it was beyond the secretary's authority and violated the ophthalmic community's rights to equal protection. After a year of deliberations and appeals, the ophthalmologists lost their lawsuit, but the suit hampered running the demonstration. HCFA ultimately implemented the demonstration at four sites in three cities. CMS estimated that the demonstration saved Medicare more than \$500,000 for some 7,000 surgeries. <sup>3</sup>
Mid-1980s – 1987	Clinical laboratory services demonstration	Contractor-supported research and design effort, in preparation for implementation	Under pressure from the clinical laboratory industry, Congress imposed a multiyear moratorium on competitive pricing activities for lab services in 1987. <sup>4</sup>

<sup>1</sup> From Robert Coulam, Roger Feldman, and Bryan Dowd, *Bring Market Prices to Medicare! Essential Reform at a Time of Fiscal Crisis* (Washington, DC: American Enterprise Institute, forthcoming). See that book for full citations of the references that follow in these notes.

<sup>2</sup> MedPAC (1999), MedPAC (2003), Mutti (2003).and Richard Beveridge and Associates (2001).

<sup>3</sup> MedPAC (1999); and Coulam (1995).

<sup>4</sup> Hoerger and Meadow (1997); Hoerger et al. (1998).

Period	Demonstration	Description	Results
Mid-1990s – 2008	Clinical laboratory services demonstration	Contractor-supported research and design effort. MMA requires demonstration. Demonstration designed, San Diego area selected.	Industry opposed the demonstration and sued to stop San Diego demonstration. A federal judge in California granted a preliminary injunction prohibiting CMS from announcing 'winners' of bidding and carrying out demonstration. Congress then repealed 'MS' authority to conduct a competitive bidding demonstration. <sup>5</sup>
Late 1980s	DME demonstration	Contractor-supported research and design effort, in preparation for implementation	Under pressure from industry, Congress barred funds for the demonstration and substitutes a fee schedule. <sup>6</sup>
Mid-1990s – 2008	DME demonstration and roll-out	BBA of 1997 authorized projects of competitive procurement of Medicare Part B services and items. Contractor-supported research and design effort, in preparation for implementation, with demonstration focused on selected high volume items.	<p>Tested in Florida and Texas sites, the demonstration shows savings of 20 percent with no notable beneficiary harms.<sup>7</sup> Main reason that these demonstrations got so far: one Senator in Florida was a notably active supporter of competitive bidding, and industry efforts to obtain injunctions in court were unsuccessful.<sup>8</sup></p> <p>These demonstrations almost resulted in implementation program-wide. The expansion of the DME bidding program was set forth in the 2003 MMA, which required a phased introduction of competitive bidding for the 10 largest MSAs in 2007; 80 of the largest MSAs in 2009; and additional areas after 2009. Providers were qualified according to enhanced quality requirements and bids were received and evaluated for the first phase of this rollout. In 2008, federal district court in the District of Columbia refused requests for a preliminary injunction.<sup>9</sup> But under pressure from industry, Congress delayed the program for 18 months, thus giving time for a new round of lobbying to kill the program entirely.<sup>10</sup> The American Association for Home-care agreed in return to accept an almost 10 percent cut in fees for the items that were to be subject to bid – Congress required the quid pro quo because the program would cost more without competitive bidding.<sup>11</sup></p>

<sup>5</sup> Congressional Quarterly (2008) CMS (2007b); Medicare Update (2008); Reuters (2008); and *Sharp v. Leavitt*, 2008 U.S. Dist. LEXIS 28623 (S.D. Cal.). See also Sec. 145 of the Medicare Improvement and Patient Protection Act, P.L. 110-275 (2008), which withdraws authority from CMS to conduct competitive bidding for clinical laboratory services (unlike Sec. 154 of that act, which *postpones* DME competitive bidding).

<sup>6</sup> Coulam, et al. (1990).

<sup>7</sup> U.S. Department of Health and Human Services (2004), and Karon, et al. (2002).

<sup>8</sup> Dowd, et al. (2000); Karon, et al., (2002); and *Florida Association of Medical Equipment Dealers v. Apfel*, 194 F. 3d 1227 (11<sup>th</sup> Cir. 1999).

<sup>9</sup> *American Association of Homecare v. Leavitt*, 2008 U.S. Dist. LEXIS 49497 (D.D.C., 2008); and *Carolina Medical Sales v. Leavitt*, 559 F. Supp. 2d 69 (D.D.C., 2008).

<sup>10</sup> Section 154 of the Medicare Improvement and Patient Protection Act, P.L. 110-275 (2008).

<sup>11</sup> Congressional Quarterly Weekly (2008); and The Hill (2008).

Period	Demonstration	Description	Results
1995 – 1997	Medicare HMO demonstration	Contractor-supported research and design work. Attempts to implement in Baltimore and Denver.	Congress stopped the Baltimore demonstration, at the behest of city/state political leaders, under pressure from health plans and the local medical establishment, supported by some advocacy groups.  U.S. District Court issued a temporary restraining order to stop the Denver demonstration in a lawsuit brought by the American Association of Health Plans. <sup>12</sup> Bids that were submitted and examined show savings of 25 to 38 percent compared with the government's payments to plans at that time. Congress then stops the demonstration for reasons similar to Baltimore. <sup>13</sup>
1997-2000	Medicare HMO demonstration	Contractor-supported research and design work, along with national and local expert panels required by BBA. Attempts to implement in Kansas City and Phoenix.	Congress stopped the demonstration, at the behest of city/state political leaders in Arizona, Kansas, and Missouri, under pressure from plans and the local medical establishment, supported by some advocacy groups. <sup>14</sup>
2010?	Medicare Competitive Cost Adjustment Demonstration	Competitive bidding for HMOs and FFS, scheduled to occur in 2010.	CMS has yet to solicit contractor support to design the demonstration. Amendments have been introduced in Congress to kill the demonstration before it begins. No one of note predicts that the demonstration will actually occur, largely due to HMO opposition and rhetoric about beneficiary harm.
2006- 2008	Part B Competitive Acquisition Program (CAP) for drugs/biologicals	Contractor-supported research and design work. Vendors selected through bidding process to supply drugs to doctors and handle billing.	The MMA of 2003 required the implementation of CAP program for Part B drugs. In late 2005, CMS conducted the first round of bidding for approved CAP vendors from whom participating physicians could obtain Part B drugs. The CAP was implemented in July 2006. Two years later, CMS accepted bids for vendor contracts for the 2009-11 CAP. While CMS received several qualified bids, contractual issues arose with the successful bidders (related to proprietary data). CMS postponed the 2009 program indefinitely in September 2008. <sup>15</sup>
2003ff	Part D Payment System	Government payment amount based on the national average of plans' bids. Enrollee premiums reflect difference between each plan's bid and the nationwide average of plan bids.	The bidding system was successfully implemented in two years. The system has been successful in setting payments and premiums for Part D since 2006, with little complaint about the fact that it is "competitive pricing."

<sup>12</sup> *American Association of Health Plans, Inc. v. Shalala*, Civil Action No. 97-WM-977 (D. Colo. May 12, 1997); and Barnes (2005).

<sup>13</sup> Dowd, et al. (2000).

<sup>14</sup> Dowd, et al. (2000).

<sup>15</sup> CMS (2008).