

HEMOCARE

Will a New Congress Reshuffle the Deck?

By Tom Gray

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Fee schedules, rental caps, competitive bidding. These issues were on the minds of home medical equipment providers when 2006 began. They were still there as the year drew to a close.

But in one important way, 2006 ended on a decidedly different note. The November elections changed the shape of Congress, putting Democrats firmly in charge of the House of Representatives and narrowly in control of the Senate.

It's not clear how the world of home care and related businesses will be affected, but one thing is certain: Leaders of the new Congress have waited through 12 years of Republican rule for a chance to do things their way. One of the last things they want is the status quo.

The Democratic takeover comes at a time when HME is looking for friends. The industry has weathered a bad year of close calls on the reimbursement front, taking hits in oxygen and power mobility but fending off much harsher proposed cuts. And stakeholders are still wondering how DME competitive bidding will turn out.

So the question is, "Will the new Congress be friendlier than the last?"

The early take from investors is optimistic, judging from the stock prices of leading HME businesses. In just the five weeks following the election, share prices of two of the largest nationals, Lincare Holdings and Apria Healthcare Group, rose more than 10 percent, while the stock market as a whole edged up by only 2 percent.

Wall Street may not have been making an expressly political statement, but it was more positive on HME in the last two months of 2006 than it had been for some time.

Industry advocates also sound a hopeful tone. The American Association for Homecare's Tyler Wilson, president and CEO, says the power shift offers home care "the chance for a fresh start."

Although a number of industry supporters were defeated in the elections, HME gained some newcomers familiar with the industry. Wilson notes that three new House members — John Yarmuth, D-Ky.; Nick Lampson, D-Texas; and David Davis, R-Tenn. — have worked for or owned home care companies.

There's another important change on the powerful House Ways and Means Committee. Rep. Charles Rangel, D-N.Y., replaces California Republican Bill Thomas as chairman. As opposed to Thomas — blamed for pushing through the competitive bidding mandate in the Medicare Modernization Act and for the Deficit Reduction Act's oxygen cap — Wilson says Rangel has pledged to work with the home care community.

The Right Kind of Democrats?

Shortly after the elections, The Scooter Store's founder and CEO Doug Harrison said the industry got just what it needed in the new crop of "fiscally conservative Democrats" who gave their party its winning edge. "You couldn't have a better politician for a DME business," he said. "That is, they're fiscally conservative, so you can make a pitch to them on the economic side, and they're very sensitive to caring for the poor and the elderly."

As the new congressional leadership settles in to begin outlining a health care agenda, consultant Schuyler Hoss of Northwest Healthcare Management says the change on Capitol Hill has brought "a new energy, if you will, on health care. Democrats are trying to stake out health care as one of their key policy issues."

Hoss adds that some prominent party members are thinking big about "new and innovative" ways to transform health care through technology, departing from the nickel-and-dime approach of trimming costs through fee cuts and competitive bidding.

In short, there is hope that the new Congress will reshuffle the deck in a way that gives HME a more favorable deal.

Countering this, however, is a sense of realism about politics and the federal budget. Because Republicans were viewed by some as too free-spending, money may be tighter for the Democrats this session. If the 110th Congress returns to a pay-as-you-go system, any new legislation that costs the government would need offsetting savings to make it revenue-neutral.

The federal bureaucracy remains the same as well. Without any change in marching orders from Congress, CMS is ramping up its rollout of competitive bidding, set by the MMA to begin in 10 major metropolitan areas in 2007.

The usual pressure to cut Medicare and Medicaid costs (in part, to make room for new services that the Democrats might want to add) shows no signs of abating. And at the state level, according to Wallace Weeks, CEO of the Weeks Group consulting firm, a number of large states might be driven toward competitive bidding for Medicaid.

A Difficult Year Closes Out

Even if the scenario of a kinder, gentler Congress doesn't pan out, industry-watchers say the coming year could hardly be as trying as 2006.

"Maybe it's wishful thinking," says Weeks, "but my gut tells me it will be hard to have more surprises roll out from CMS than we did in 2006."

Merger-and-acquisitions specialist Dexter Braff, president of The Braff Group, says 2006 was "a horrible year for the industry" and hopes 2007 will be a time when — outside of competitive bidding — not much else happens. In context, that's good news. "I think the industry has a chance of having a year of stability," he says.

What made 2006 so challenging was not just actual events, such as the drastic reimbursement changes for oxygen and power mobility equipment, but the recognition that the government can, and might, do much more damage.

The O2 story is a case in point. The Deficit Reduction Act, signed into law in February 2006, dealt the industry one blow by capping rentals at 36 months. But a much tougher proposal, for a 13-month cap, was waiting in the wings. It was endorsed in President Bush's 2007 budget, and the HHS Office of Inspector General issued a report in September supporting it.

Although Congress flirted with the 13-month solution, the 36-month cap remained intact as legislators found other ways to fund Medicare and avoid a scheduled 5 percent reduction in physician payments.

But the idea of a 13-month cap is not out of circulation. If it comes into play, say observers, the oxygen business would fundamentally change from a distribution-service model to drop-shipping on a 13-month installment plan.

"The business as we know it would end," states Mike Barish, president of AnCor Healthcare Consulting. A less drastic cut in the rental period would also be damaging, even if its impact wasn't immediately felt by everyone in the business.

Braff suggests that even a cut that looks like a compromise — to 30 months, for instance — "would be devastating for the industry" because it would open the door to more reductions in future horse-trading over Medicare funding. In other words, it would inject another heavy dose of uncertainty into an industry that already suffers from what he calls a serious "risk overhang."

The fear that the worst is yet to come has helped put a damper on the M&A market, which The Braff Group tracks quarter-by-quarter. The most recent available figures on HME transactions showed steep year-over-year drops: 54.5 percent for the third quarter, 38.6 percent for the first three quarters.

Barring an unlikely surge of buying and selling in the fourth quarter, a Braff report said 2006 was shaping up as the first one not showing an increase in transaction volume since M&A tracking began in 2001.

In light of the risk overhang, the report judged it remarkable not that the number of HME deals was down but that a significant number of deals — 43 in the first three quarters of 2006 — were completed. Braff credited much of this activity to bargain-hunting by private equity groups.

Gearing Up for NCB

The industry's biggest looming cloud is the scheduled start of national competitive bidding. At press time, essential facts, such as the first round of MSAs to be chosen and the products to be included, had not yet been made public. The exact timetable was also unclear.

With such details lacking, it is still anybody's guess as to how HME companies or networks will behave once the bidding gets underway.

Will there be ruinous price wars, in which the winners end up losing money and patients suffer from drastic reductions in service? “Everybody needs to bid calmly and rationally,” says Harrison of The Scooter Store. “To the extent that people bid unrealistically low prices, it will affect everybody horribly.”

Or will rationality rule and keep the bidding restrained enough to ensure reasonable profit and continuation of decent service to HME customers? Even under this more optimistic scenario there would be losers as well as winners, though the more efficient providers would be rewarded for their operational skill.

Unless Congress orders a delay in the bidding program, HME should start seeing answers to those questions, for better or worse, over the coming months. There is no consensus in the industry about the outcome, although just about everyone agrees that competitive bidding is a bad idea.

Nationwide firms have economies of scale and buying power, two assets that should help them in the bidding. At the other end of the scale, small operators with limited geographic reach may face a do-or-die situation.

“If I’m a mom-and-pop business in one city” and am outbid, says Harrison, “I’d be in a world of hurt.”

But Weeks says the biggest companies aren’t shoo-ins. “I think the nationals will be consistent players from competition area to competition area, but I think they will have plenty of other independent competitors,” he says.

“There are independents I could take you to in every area of the country whose financial performance will allow them to outbid Apria or Lincare.”

Much Ado about Small Change?

The year should also indicate whether the fiscal benefits of competitive bidding are worth all the government’s time and effort.

Hoss, for one, thinks it may be a big disappointment, especially if bidders avoid a price war. “The work so far has been costly, complex and difficult to implement, and the dollars you save are not that much,” he says, adding that “the competitive bidding process is inherently flawed because you spend so much for so little return.”

Braff agrees. “Theoretically we are going to have competitive bidding, but I don’t think the rate reduction is going to be anything near what the government expects.”

Louis Feuer of Dynamic Seminars and Consulting, an HME sales and education consultant, notes another cost: the narrowing of providers through the bidding process. This reduces the number of providers available to beneficiaries in a given market, he says. “What they are starting to do is take customer choice away.”

HME could get another unpleasant shock from competitive bidding a few years down the road.

As Braff points out, the program will generate a rich HME database even if it doesn’t show much in the way of cost savings. CMS will have detailed information on what bidders in the first 10 MSAs are willing to charge and, by implication, how low they can go and still stay in business. CMS could use the data to impose an inherent-reasonableness standard on the entire industry.

Hoss echoes HME’s continuing lament: “I don’t think policy-makers have a rich enough appreciation of the complexities of health care, let alone home care, and they don’t understand the damage they can do.”

But he says the new mood in Congress may steer lawmakers away from incremental cost-cutting programs like competitive bidding toward broader measures. Hoss, who counts Cybernet Medical among his clients, thinks technology — including telehealth systems that can cut down on hospital days and allow patients to recuperate at home — represents the kind of emerging strategy that could pique legislators’ interest.

“A lot of people are starting to say we’ve got some fundamental problems that we need to revisit and we need to stop tinkering with the details,” he continues. “The dollars involved are pitifully small — at least to CMS — and the impact of dinking around with competitive bidding and all these other schemes is minimal.

“Particularly as the Democrats are cranking up the bills and requests to CMS, they are going to start being required to respond to and deal with larger policy issues.

“When you talk to people on the Hill, there’s not a lot of interest in competitive bidding,” Hoss adds. “I don’t think people are looking to the world of HME to save Medicare.”

New Faces in High Places

With health care on the Democrats' priority list as they take control of Congress, the HME industry is looking for new friends on Capitol Hill. And it could have some among new members elected in November — and maybe even from new congressional leadership. Democrats have a history of funding entitlements, and they don't like cutting benefits for the poor and the elderly. Even so, Washington insiders say the key in the 110th Congress may depend on keeping the public health care budget in check — and keeping home care off the chopping block. To locate your members of Congress, visit the congressional Web portal at <http://thomas.loc.gov>.

Sen. Max Baucus, D-Mont. — Baucus takes over as chairman of the powerful Senate Finance Committee — which oversees Medicare and Medicaid — a position Iowa Republican Charles Grassley has held on and off for more than a decade. In fact, after a stint at its helm from 2001-2003, Baucus was succeeded by Grassley, who has focused on HME hot buttons including competitive bidding and fraud and abuse during the past several years. Baucus worked to pass the Medicare prescription drug benefit, has said he is concerned that rural health care gets a fair shake, and also thinks the government's use of health information technology could help wring more from health care dollars. Recently, however, Baucus has turned his attention to the war in Iraq; his nephew was killed in combat in July.

Rep. Nick Lampson, D-Texas — Lampson served in the House from 1997 to 2005 and returns to Congress this session to assume Tom Delay's old seat in the 22nd district of Texas. Lampson is known for his efforts on child safety issues and founded the Congressional Caucus on Missing and Exploited Children. A former home health care business owner — he ran visiting nurse service Jefferson County Home Health Care with his wife from 1993-1997 — Lampson says improving access to affordable, quality health care is one of his biggest priorities.

Rep. David Davis, R-Tenn. — A respiratory therapist who also holds a degree in organizational management, Davis is president of Shared Health Services in Johnson City, Tenn., which provides hyperbaric oxygen therapy. He has served as chairman of the Tennessee Association for Home Care and as a clinical adjunct faculty member of the Respiratory Care Department of East Tennessee State University. Elected to Tennessee's 1st district seat in November, Davis believes home and community-based care is a way to control health care costs.

Rep. Charles Rangel, D-N.Y. — Rangel is serving his eighteenth term representing New York's 15th congressional district in Manhattan, including Harlem, the Upper West Side and Washington Heights. He is the new chairman of the powerful House Ways and Means Committee, which has joint jurisdiction over Medicare with the Energy and Commerce Committee. AAHomecare President Tyler Wilson says the association has had some “very positive conversations” with Rangel, who is “going to be in the driver's seat for a lot of issues that confront home care and home health.” The committee was headed by California Republican Bill Thomas, who has retired. Long-time HME foe Thomas is blamed by many in the industry for DME competitive bidding and the oxygen rental cap.

Rep. John Dingell, R-Mich. — Assuming office in 1955 from Michigan's 15th district, Dingell is called the “Dean of the House” as its longest-serving member. He took over the seat from his father, John Dingell Sr., and at the beginning of every session of Congress, he introduces a national health insurance bill his father sponsored when he was a member. With the Democrats' victory in November, Dingell once again becomes chairman of the House Energy and Commerce Committee, which he had chaired previously from 1981 to 1995. The committee has joint jurisdiction with the Ways and Means Committee over Medicare, and sole jurisdiction over Medicaid.

Rep. Pete Stark, D-Calif. — Stark, a House member from the 13th district of California, will now chair the Ways and Means Health Subcommittee. With a longstanding interest in health care issues, he has been critical of the Bush administration's treatment of the uninsured, and introduced a constitutional amendment that would, in effect, force expansion of coverage to all Americans. Stark says his approach to universal coverage is to build on the success of the Medicare program. Another issue on his health care to-do list is strengthening Medicare by expanding preventive benefits, reducing medical errors and streamlining regulations.

Rep. John Yarmuth, D-Ky. — Yale grad Yarmuth won a close election in November over five-time incumbent Anne Northup for Kentucky's 3rd congressional district. He served as a legislative aide to Republican Sen. Marlow Cook in the 1970s, but in 1985 changed his party registration to Democrat. After a stint in public relations and marketing for Caretenders Healthcorp, a health services provider based in his hometown of Louisville, Yarmuth founded *LEO Newsweekly*, for which he wrote a popular political column. No stranger to political debate, after selling the paper, Yarmuth faced off on a series of issues on weekly television programs called “Yarmuth & Ziegler” and its successor “Hot Button.”

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