

In The News

Bid Lawsuit Just Got Bigger

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Home Medical Equipment News

WASHINGTON – There are now 10 lawsuits representing 17 HME providers suing the federal government for breach of contract as part of the original Round 1 of competitive bidding, says Jerry Stouck, a shareholder with Greenberg Traurig, the law firm representing Cardiosom.

Cardiosom paved the way for the lawsuits when a U.S. Court of Federal Claims judge ruled in its favor in late June, saying the provider is entitled to damages for being awarded contracts and then having them rescinded as part of an 18-month delay to the program in 2008.

“We’ve been in touch with all the attorneys involved,” Stouck said. “There are going to be some individual issues—the damages in terms of lost profits are going to depend on the company—but I think it makes a lot of sense for there to be coordination among the cases.”

Because of a six-year statute of limitations, providers had until July 14 to file lawsuits against the government.

In addition to filing a lawsuit on behalf of eight providers, Munsch Hardt has also filed a class action complaint on behalf of all the providers that were awarded contracts, says Ross Parker, a shareholder in the law firm’s litigation section.

“Each of these 325 providers that had their contracts unilaterally terminated have a right to be heard and seek redress,” he said. “They relied upon governmental contracts that were awarded to them and then were taken from them with the stroke of a pen. If ever a private corporate citizen had the right to sue the government, this is such a case.”

The eight providers are: Advacare Home Services, Life Healthcare Services, Health Systems Services, Pulmocair Respiratory, Coastal Care Medical Supply, All Star Oxygen & Home Medical Equipment, DSI Midwest Associates and Care Touch Medical Equipment.

While the firms work with the judge in the case, Patricia Campbell-Smith, to coordinate the lawsuits, Cardiosom is also taking its next step: seeking damages. To put together a package, the provider will first need some records from CMS, Stouck says.

“During that three-year period covered by the contracts, (once they were implemented), those CPAP machines were sold by someone—how much was sold, what were the prices,” he said.

Ultimately, the lawsuits are subject to appeal, a course of action the government will likely take, the attorneys involved believe.

“Even though it’s not a case of first impression, the government could possibly appeal this as high as the Supreme Court,” said Edward Vishnevetsky, an associate with Munsch Hardt. “If the government loses, the damages could be in the hundreds of millions of dollars. They certainly don’t want to lose that.”

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