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## Press Release

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### **American Association for Homecare Urges Tom Daschle and Congress to Rescind Controversial 11<sup>th</sup>-Hour Bush-Medicare Bidding Rule**

#### ***CMS Bidding Program is Anti-Competitive and Not the Answer for Patients & Seniors***

ARLINGTON, VA, January, 23, 2009 – In a letter sent today to Health and Human Services Secretary-Designate Tom Daschle, Chairman Max Baucus, Chairman Charles Rangel, and Chairman Henry Waxman, American Association for Homecare President Tyler J. Wilson urged policymakers to review and rescind the controversial Center for Medicare & Medicaid Services (CMS) “competitive” bidding rule that was issued in the waning hours of the Bush Administration.

“We view the bidding program as a bureaucratic, anti-competitive price-setting system that will have the unintended consequences of reducing quality of, and access to, care for patients,” said Tyler J. Wilson, president of the American Association for Homecare. “Defying the spirit of transparent and open government, this bidding program was rushed into implementation in the 11<sup>th</sup> hour of the Bush Administration without regard for the negative impacts it will have on seniors and homecare patients.”

The bidding program would selectively contract a small group of homecare providers based solely on lowest-cost, forcing out providers who utilize high-quality homecare equipment or provide critical patient services. The “competitive” bidding program is actually anti-competitive, in that it clears the marketplace of competition by reducing the number of eligible providers. The quality of, and access to, care for patients will be threatened due to forced cutbacks in homecare services—cutbacks that will also increase the length and cost of hospital stays as the number of home medical equipment providers shrinks.

Home medical equipment and care is already the most cost-effective slowest-growing portion of Medicare spending, increasing only 0.75 percent per year according to the January-February 2009 issue of *Health Affairs*. That compares to more than 6 percent annual growth for Medicare spending overall. Home medical equipment represents only 1.6 percent of the Medicare budget.

**Please find the full text of the letter below:**

January 23, 2009

Department of Health and Human Services Secretary-Designate Tom Daschle  
Chairman Max Baucus

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Chairman Charles Rangel  
Chairman Henry Waxman

Dear Secretary-Designate Daschle and Committee Chairmen:

On behalf of the nation's providers of home medical equipment and services, the American Association for Homecare urges you to rescind the last-minute rule issued by the Centers for Medicare and Medicaid Services (CMS) regarding the competitive bidding program.

On January 15, 2009, in the final hours of the Bush administration, CMS submitted to the *Federal Register* its interim final rule on the bidding program for home medical equipment, or durable medical equipment (DME), expected to take effect on February 17, 2009. While the issuance of interim final rules is generally reserved for healthcare *emergencies*, this clearly was not such a case. Instead, the process was corrupted to push through a Bush Medicare program in the 11th hour of the administration—defying the spirit of transparent and open government.

We sincerely appreciate the new Administration's actions to suspend and review pending federal rules, as detailed in the White House Chief of Staff memorandum issued on January 20, 2009. We hope that you will exercise the option outlined in this memo and review and rescind this rule, which was rushed into implementation without regard for the negative impacts the program will have on seniors and homecare patients in America. As it stands, the "competitive" bidding program will actually reduce competition, along with healthcare quality and access to care for patients and seniors.

The bidding program would selectively contract homecare providers based solely on lowest-cost, forcing out providers who utilize high-quality homecare equipment or provide critical patient services. The quality of, and access to, care for patients will be threatened due to forced cutbacks in homecare services. These cutbacks will also increase the length and cost of hospital stays as the number of home medical equipment providers shrinks.

As you know, Congress delayed the bidding program because it believed the initial roll-out of the program in 2008 had disastrous results for the four million patients affected and for the hundreds of providers, mostly small businesses, that were needlessly excluded from Medicare as a result of the first round of bidding. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) required that several reforms be incorporated into the bidding program. MIPPA addressed several near-term concerns with the program, but thoughtful and deliberate rulemaking by CMS was clearly anticipated by Congress, given the overwhelming level of Congressional and stakeholder concern during initial implementation. Under these circumstances, it would be much more appropriate for CMS to have published a proposed rule, ensuring that comments received during the comment period would be taken into account before any final rule is published.

We strongly disagree with the statement by CMS in the interim final rule that MIPPA "did not alter fundamental requirements contained in the competitive bidding program statute and regulations or revise the methodologies used by us in calculating payment amounts and selecting suppliers under the program." Because Round One of the competitive bidding

program was fraught with procedural and operational flaws, the new rule raises serious questions about due process, fair selection of providers, and patient access to quality care. In its rule, CMS has done the absolute minimum to comply with the statute, which affects healthcare for millions of beneficiaries.

Additionally, the homecare community has expressed its interest in working with CMS to review the mechanics of the bidding program. However, CMS has not capitalized on the only existing mechanism, the Program Advisory and Oversight Committee (PAOC), to seek or incorporate feedback. In fact, after MIPPA was passed, CMS disbanded the PAOC, which was created to provide the agency with concrete, real-world guidance on the development and implementation of the bidding program.

We view the bidding program as a bureaucratic, anti-competitive price-setting system that will have the unintended consequences of reducing quality of, and access to, care for patients, as well as competition in this sector by eliminating the vast majority of qualified homecare providers that currently compete for patients on the basis of quality and service. This bidding program is similar to a closed-model HMO and will have the effect of government-mandated consolidation in the homecare sector.

Home medical equipment and care (durable medical equipment) is *already* the most cost-effective slowest-growing portion of Medicare spending, increasing only 0.75 percent per year according to the January-February 2009 issue of *Health Affairs*. That compares to more than 6 percent annual growth for Medicare spending overall. Home medical equipment represents only 1.6 percent of the Medicare budget.

Because this issue has been mischaracterized repeatedly, it's worth mentioning that the home medical sector was subjected to a deep, 9.5 percent reimbursement cut (effective January 1, 2009) as a part of MIPPA in order to "pay for" the savings the bidding program has been projected to save. It should also be noted that our Association recommended an aggressive 13-point anti-fraud program last year in order to help the federal government prevent criminals from participating in Medicare. However, the bidding program, a price-setting mechanism, should not be confused with anti-fraud measures.

We ask for a review of the rule and rescission of the rule in order to allow the affected patients and providers the deserved opportunity to voice their concerns about the program.

Sincerely,

Tyler J. Wilson  
President, American Association for Homecare

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*The American Association for Homecare represents durable medical equipment providers, manufacturers, and other organizations in the homecare community. Members serve the medical needs of millions of Americans who require oxygen equipment and therapy, mobility assistive technologies, medical supplies, inhalation drug therapy, home infusion, and other medical equipment and services in their homes. The Association's members operate more than 3,000 homecare locations in all 50 states. Visit [www.aahomecare.org](http://www.aahomecare.org).*

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