



April 13, 2009

Mr. Charles Johnson, Acting Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Ms. Charlene Frizzera, Acting Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Ms. Nancy-Ann DeParle, Director
White House Office of Health Reform
The White House
Washington, D.C. 20500

Dear Acting Secretary Johnson, Acting Administrator Frizzera, and Ms. DeParle:

The American Association for Homecare and the 27 regional and state associations listed below, which represent providers of durable medical equipment (DME) and services, urge you to rescind the CMS competitive bidding rule published during the last hours of the Bush administration. The rule, which would re-implement Round One of the bidding program in the DME sector of Medicare, would reduce access to care and put thousands of DME providers out of business, eliminating jobs at a time when the federal government is trying to preserve them. The rule does not address the fundamental problems of the program that came to light during its brief implementation last year.

Because of flaws in the bidding program, Congress voted to reform and delay the program as part of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), enacted on July 15, 2008. CMS published an interim final rule on the bidding program on January 16, 2009, and that rule will be implemented on April 18, 2009, unless it is rescinded.

MIPPA addressed several near-term concerns with the program, but thoughtful and deliberate rulemaking by CMS was clearly expected by Congress, given the overwhelming level of congressional and stakeholder concern during initial implementation. The intent behind the MIPPA provisions on bidding was for CMS to correct the fundamental flaws of Round One of

bidding, allowing for feedback from stakeholders through a comment period before CMS issued a final rule. This process did not take place and the flaws in the bidding program remain.

As currently designed, this bidding program will lower quality and reduce access to care for seniors and people with disabilities. Moreover, it will *reduce* competition, eliminating up to 90 percent of home medical equipment businesses in any market area where it is implemented. Many of these practices are small businesses already struggling under the current economic recession.

This bidding program allows the government to selectively contract with only a small fraction of current homecare providers, forcing out DME companies that provide high-quality equipment or provide critical patient services. Competitive bidding, which would ultimately drive national reimbursement rates, ignores the critical role of services required to provide care to people in their homes. It will result in fewer resources for service-related activities that patients and physicians have come to expect, which allow people to remain in their homes. The program does not adequately account for providers' ability to serve a geographic market. The program will produce a bureaucratic, anti-competitive price-setting system that would be similar to a closed-model HMO and would have the effect of government-mandated consolidation in the homecare sector.

This is not the solution to Medicare's reform—and it is certainly not the answer for patients and seniors.

The current structure of the competitive bidding program bears no resemblance to earlier demonstrations. Unlike the 1997-98 demonstrations in Florida and Texas, the current version of the bidding program will put at least 90 percent of providers out of business and will harm Medicare beneficiaries' access to quality home medical equipment and services.

While proponents of this bidding program argue that it will reduce Medicare spending, the inevitable cutbacks in services will result in increased length and cost of hospital stays. Reducing access to quality home medical equipment and services will give many seniors no choice other than to leave their homes for nursing homes or hospitals. The equipment and service for medical oxygen therapy, for example, cost about \$8 per day. This is far cheaper than an average daily cost of about \$200 for a nursing facility and \$5,000 for a hospital stay.

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 most recent National Health Expenditures data. That compares to more than 6 percent annual growth for Medicare spending overall. DME represents only 1.6 percent of the Medicare budget.

Proponents of the bidding program have also claimed that it will reduce fraud and abuse in the Medicare system, confusing the price-setting mechanism with effective anti-fraud measures. However, long-overdue accreditation requirements for DME finally take effect this year, and surety bond requirements for DME also take effect this year. On top of that, the American Association for Homecare has presented to Congress a far more aggressive and comprehensive

13-point anti-fraud plan, which lays out tough, effective measures to stop waste, fraud, and abuse in Medicare's DME sector.

In summary, we believe that CMS should immediately withdraw the interim final rule for competitive bidding and identify the problem areas that led to the delay of Round One of the program. CMS should issue a proposed rule that solicits public comments on the implementation of MIPPA and other modifications and improvements to the program. Specifically, CMS should convene the Program Advisory and Oversight Committee immediately.

We support efforts to make healthcare more affordable and accessible. To that end, we urge you to review and rescind the flawed "competitive" bidding regulations because of the far-reaching negative impact it will have on patients and businesses nationwide. If you have more questions regarding our views on this issue, please contact me at (703) 836-6263.

Sincerely,



Tyler J. Wilson
President, American Association for Homecare

Alabama Durable Medical Equipment Association
Arizona Medical Equipment Suppliers Association
Association of Indiana Home Medical Equipment Services
Big Sky Montana & Idaho Association of Home Medical Equipment Suppliers
California Association of Medical Product Suppliers
Colorado Association of Medical Equipment Services
Florida Association for Medical Equipment Services
Georgia Association of Medical Equipment Services
Illinois Association for Medical Equipment Services
Jersey Association of Medical Equipment Services (New Jersey)
Kentucky Medical Equipment Suppliers Association
Maryland National Capital Homecare Association
Medical Equipment Suppliers Association
(Texas, Louisiana, Arkansas, Oklahoma, New Mexico)
Michigan Home Health Association
Midwest Association for Medical Equipment Services
(Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota,)
Mississippi Association of Medical Equipment Suppliers
Nevada Association of Medical Products Suppliers
New England Medical Equipment Dealers Association
(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
New York State Medical Equipment Providers Association
North Carolina Association for Medical Equipment Services

Ohio Association of Medical Equipment Services
Pennsylvania Association of Medical Suppliers
South Carolina Medical Equipment Services Association
Tennessee Association for Home Care
Utah Medical Equipment Dealers
Virginia Association of Durable Medical Equipment Companies
West Virginia Medical Equipment Suppliers Association