



*Caring that Feels Right at Home*  
**Press Release**

**FOR IMMEDIATE RELEASE: April 16, 2009**

**CONTACTS:** Michael Reinemer, 703-535-1881, michaelr@aahomecare.org  
Tilly Gambill, 703-535-1896, tillyg@aahomecare.org

**84 Members of Congress, Led by Rep. Betty Sutton, Urge Policymakers to Rescind Controversial Medicare “Competitive” Bidding Rule before April 18 Deadline**

*Congressional Members Address Negative Impacts of the Program on Patients & Businesses Nationwide in Letter to the White House & Department of Health and Human Services*

WASHINGTON, D.C., April 16, 2009 – In a letter sent yesterday, a bipartisan group of 84 members of Congress urged the White House Office of Health Reform, the Centers for Medicare & Medicaid Services, and the U.S. Department of Health and Human Services to review and rescind the controversial “competitive” bidding rule before it is implemented on April 18, 2009. Representatives signing the letter include Debbie Wasserman-Schultz (D-Fl), Marsha Blackburn (R-Tenn.), and John Lewis (D-Ga.).

The bidding program, which was initially suspended by Congress in 2008 because of numerous flaws detected, will lower quality and reduce access to care for seniors and people with disabilities. The current version of the bidding program will put at least 90 percent of providers—many of which are small businesses—out of work at a time when unemployment is high and government is already fighting to protect jobs.

“As growing numbers of seniors enter the Medicare program, it is important that we take care to maintain an adequate number of qualified and capable providers to address demand for care in the home, especially in rural areas,” said Betty Sutton, a U.S. Representative from Ohio’s 13th District.

The current structure of the program bears no resemblance to earlier demonstration programs in Florida and Texas in 1997 and 1998. The current bidding program is actually anti-competitive because it will selectively contract with a small group of homecare providers based on the lowest bid, forcing out providers who utilize high-quality homecare equipment or provide critical patient services. These selective contracts would result in the immediate elimination of thousands of eligible small businesses throughout the country from the Medicare program.

“Of the more than 4,000 providers in the initial bidding areas, only 376 were deemed to have met the bidding program requirements,” said Rep. Sutton, describing the implementation last year. “This is not a solution to Medicare reform and would only reduce quality and access to care for seniors and people with disabilities.”

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 from the federal government. That rate compares to more than 6 percent annual growth for Medicare spending overall. Home medical equipment represents only 1.6 of the Medicare budget.

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

April 15, 2009

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

Ms. Nancy-Ann DeParle, Director  
White House Office of Health Reform  
The White House  
Washington, D.C. 20050

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

On January 16, 2009, the Centers for Medicare and Medicaid Services (CMS) published an interim final rule on the durable medical equipment (DME) competitive bidding program effective April 18, 2009. We are deeply concerned that CMS has rushed implementation of this rule counter to Congress' intent when it delayed the competitive bidding program as part of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). As such, we urge you to rescind the rule so that all affected parties will have an opportunity to comment on it as a proposed regulation.

In the initial implementation of the durable medical equipment competitive bidding program, many questions were raised as to the immediate impact of the program on quality and access to care for patients. Of particular concern was the immediate elimination of thousands of eligible providers throughout the country from the Medicare program. Of the more than 4,000 providers in the initial bidding area, only 376 were deemed to have met the bidding program requirements, which were not clearly defined by CMS and its contractor. As growing numbers of seniors enter the Medicare program, it is important that we take care to maintain an adequate number of qualified and capable providers to address demand for care in the home, especially in rural areas.

The agency's stated rationale in its interim final rule for not electing to pursue the traditional

notice and comment rulemaking was that the statutory language was highly prescriptive and it would be redundant to propose a rule to incorporate the words of a provision already contained in statute. In fact, we remain concerned that many of the recommended changes designed to prevent future access problems and confusion in the competitive bid process were not incorporated or even raised for public comment. Any final rulemaking on this program should at a minimum provide assurances that the alleged discrepancies between information submitted by bidders and received by CMS will not again result in the unfair disqualification, without appeal, of longstanding companies in our states who have offered quality homecare for decades. CMS also needs to ensure that its contractor is consistently and properly applying the standards established to qualify suppliers for participation in the program, notably a supplier's demonstrated capacity to serve a given area and patient population.

We agree that MIPPA addressed near-term concerns with the program, but thoughtful and deliberate rulemaking by CMS was clearly anticipated by Congress. Under the circumstances, it would be much more appropriate for CMS to utilize traditional notice and comment rulemaking ensuring a collaborative and transparent process, and program success.

Thank you for your consideration and we look forward to your response.

**Signing members below.**

Signers of April 15, 2009 Congressional Letter to CMS re Competitive Bidding Interim Final Rule

<i>Alabama</i>	Rep. Robert Aderholt (R)
<i>California</i>	Rep. Joe Baca (D) Rep. Sam Farr (D)
<i>Connecticut</i>	Rep. Joe Courtney (D)
<i>Florida</i>	Rep. Gus Bilirakis (R) Rep. Kathy Castor (D) Rep. Lincoln Diaz-Balart (R) Rep. Mario Diaz-Balart (R) Rep. Alan Grayson (D) Rep. Alcee Hastings (D) Rep. Ron Klein (D) Rep. Kendrick Meek (D) Rep. Adam Putnam (R) Rep. Debbie Wasserman-Schultz (D) Rep. Robert Wexler (D)
<i>Georgia</i>	Rep. John Barrow (D) Rep. Sanford Bishop (D) Rep. Hank Johnson (D) Rep. John Lewis (D) Rep. Lynn Westmoreland (R)

*Illinois* Rep. Jerry Costello (D)

*Indiana* Rep. Joe Donnelly (D)  
Rep. Peter Visclosky (D)

*Iowa* Rep. Bruce Braley (D)  
Rep. Tom Latham (R)  
Rep. Rep. David Loebsack (D)

*Kentucky* Rep. Geoff Davis (R)

*Maine* Rep. Michael Michaud (D)

*Maryland* Rep. John Sarbanes (D)

*Massachusetts* Rep. William Delahunt (D)  
Rep. Barney Frank (D)  
Rep. John Olver (D)  
Rep. John Tierney (D)

*Mississippi* Rep. Travis Childers (D)

*Missouri* Rep. Emanuel Cleaver (D)  
Rep. Blaine Luetkemeyer (R)

*Nevada* Rep. Shelley Berkley (D)  
Rep. Dina Titus (D)

*New Jersey* Rep. John Adler (D)  
Rep. Frank LoBiondo (R)  
Rep. Albio Sires (D)  
Rep. Chris Smith (R)

*New York* Rep. Gary Ackerman (D)  
Rep. Michael Arcuri (D)  
Rep. Tim Bishop (D)  
Rep. John Hall (D)  
Rep. Brian Higgins (D)  
Rep. Maurice Hinchey (D)  
Rep. Steve Israel (D)  
Rep. Peter King (R)  
Rep. Christopher Lee (R)  
Rep. Nita Lowey (D)  
Rep. Carolyn Maloney (D)  
Rep. Eric Massa (D)  
Rep. Carolyn McCarthy (D)  
Rep. Mike McMahon (D)  
Rep. Gregory Meeks (D)  
Rep. Edolphus Towns (D)

*North Carolina* Rep. Bob Etheridge (D)  
Rep. Larry Kissell (D)  
Rep. Sue Myrick (R)  
Rep. David Price (D)  
Rep. Heath Shuler (D)

*Ohio* Rep. Robert Latta (R)  
Rep. Jean Schmidt (R)  
Rep. Betty Sutton (D)

*Oklahoma* Rep. Dan Boren (D)

*Pennsylvania* Rep. Jason Altmire (D)  
Rep. Kathy Dahlkemper (D)  
Rep. Tim Murphy (R)  
Rep. Bill Shuster (R)

*South Carolina* Rep. John Spratt (D)  
Rep. Joe Wilson (R)

*Tennessee* Rep. Marsha Blackburn (R)

*Texas* Rep. Henry Cuellar (D)  
Rep. Chet Edwards (D)  
Rep. Charles Gonzalez (D)  
Rep. Kay Granger (R)  
Rep. Eddie Bernice Johnson (D)  
Rep. Ted Poe (R)  
Rep. Pete Sessions (R)  
Rep. Lamar Smith (R)

*Virginia* Rep. Tom Perriello (D)  
Rep. Robert Wittman (R)