



Cosponsor S. 1428, The Hatch-Conrad Bill to Strengthen Access to Homecare

The Medicare Durable Medical Equipment Access Act of 2007

On May 17, 2007, Senator Orrin Hatch (R-Utah) and Senator Kent Conrad (D-N.D.) introduced S. 1428, the Medicare Durable Medical Equipment Access Act of 2007. This bill would modify the competitive acquisition provisions of the Medicare Modernization Act of 2003 (MMA) to protect patient access to quality care and protect homecare providers.

The American Association for Homecare (AAHomecare) strongly urges support for S. 1428. This bill does not repeal the competitive acquisition process for durable medical equipment (DME). Instead, it makes changes to its structure in order to ensure beneficiaries' access to DME is maintained, protect small providers of quality DME items, therapies, and services, and foster a dynamic marketplace for Medicare-reimbursed DME. S. 1428 would:

- **Protect patients** by requiring that competitive bidding not begin until quality standards are in place;
- **Exempt smaller, rural areas** (metropolitan statistical areas with populations under 500,000);
- **Allow qualified small providers to participate** at the selected award price;
- **Restore the rights** of participating providers to administrative and judicial review;
- **Exempt items and services unless savings of at least 10 percent can be demonstrated.**

Background

Section 302(b)(1) of the Medicare Modernization Act requires Medicare to replace the current DME payment methodology for certain items with a competitive bidding process. In 2007, this process will begin in 10 of the largest metropolitan statistical areas (MSAs) and will expand to 70 additional MSAs. Again, S. 1428 does not repeal this competitive bidding process but rather adds protections for beneficiaries and for providers, as outlined below.

Beneficiary Protections (Section 2):

1. The MMA requires the Secretary to include quality standards in the competitive acquisition process; however, the MMA also allows the Secretary to waive the application of quality standards if applying the standards would delay implementation of the process. The quality standards are essential to ensuring that beneficiaries are not forced to use the lowest cost provider without consideration of the quality of the DME items, therapies, and services provided. The Hatch-Conrad bill would require the Secretary to include quality standards before implementing competitive acquisition.
2. The MMA allows the Secretary to exempt rural areas and urban areas with low population density from the competitive acquisition process. It is important to ensure that competitive acquisition is not implemented in areas that lack the health care infrastructure to support it. Doing so would penalize beneficiaries in those areas. S. 1428 would require the Secretary to exempt rural areas, including MSAs with less than 500,000 people, and urban areas with low population density.
3. The MMA created a Program Advisory and Oversight Committee (PAOC) composed of stakeholders to advise the Secretary on the implementation of competitive acquisition. However, despite the importance of this committee, the MMA does not apply the Federal

Advisory Committee Act (FACA) to it. The purpose of FACA is to ensure that advice rendered to the executive branch by advisory committees be both objective and accessible to the public. As such, S. 1428 applies FACA to PAOC.

Small Provider Protections (Section 3):

1. The MMA allows the Secretary to contract with only as many providers as the Secretary deems necessary to meet the demand of an area. Any provider not awarded a contract would be prohibited from participating in Medicare for up to 3 years for items and services subject to competitive bidding. S. 1428 would allow qualified providers that did not receive a contract to continue to provide DME in Medicare at the competitive acquisition bid rate. Qualified providers would be small businesses who submitted a reasonable bid (a bid below the fee schedule amount) to the Secretary and who are otherwise compliant with Medicare program requirements.
2. The MMA explicitly prohibited administrative or judicial review for competitive acquisition of DME. This means that providers do not have legal recourse to appeal the bid amount or contracts. S. 1428 would restore appeal rights for competitive acquisition of DME. These rights exist elsewhere in the Medicare program.
3. Under the MMA, the Secretary can only competitively acquire an item if the Secretary believes that doing so would result in significant savings to Medicare. It is important for the Secretary to show that the savings from competitive acquisition justify constructing a bureaucracy to implement the program. To that end, S. 1428 would require the Secretary to show that competitive acquisition would result in savings of at least 10 percent for items and services to be eligible for competitive bidding.
4. Under the MMA, the Secretary can use competitive acquisition bid rates in one MSA to set the reimbursement for another MSA. S. 1428 would require that before doing so the Secretary conduct a comparability analysis of the two MSAs. This will help prevent any applications of bid rates outside of an MSA that are inappropriate.

Please sign on as a cosponsor to S. 1428. Contact Pattie DeLoatche in Sen. Hatch's office at (202) 224-5251 or Lindsey Henjum in Sen. Conrad's office at (202) 224-2043.