



August 10, 2012

**VIA ELECTRONIC COMMUNICATION:** DMEPOS@cms.hhs.gov

Marilyn Tavenner  
Acting Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21224

**Re: Medicare Program; Public Meeting Regarding Inherent Reasonableness of Medicare Fee Schedule Amounts for Non-Mail Order (Retail) Diabetic Testing Supplies; Notice**

Dear Administrator Tavenner:

The American Association for Homecare (AAHomecare) submits the following comments in response to the July 23, 2012 hearing on the application of inherent reasonableness (IR) to the reimbursement rate for retail suppliers of diabetic test strips (DTS).

AAHomecare represents durable medical equipment (DME) providers, manufacturers, and others in the homecare community that serve the medical needs of millions of Americans who require diabetes management supplies, oxygen systems, wheelchairs, medical supplies, and other medical equipment and services in their homes. Members operate more than 3,000 homecare locations in all 50 states. Due to our membership, which includes manufacturers, distributors and mail-order and retail suppliers of diabetic test strips, AAHomecare is in a unique position to comment on the proposed use of inherent reasonableness (IR) to address reimbursement rates for diabetic supplies furnished in a retail setting.

**Access and Quality**

AAHomecare believes that CMS has the responsibility to maintain access, choice and quality to items and associated services covered by the Medicare program. The utmost care must be taken when considering the use of inherent reasonableness authority to determine if a Medicare item's reimbursement rate is "grossly excessive." Otherwise, Medicare could severely damage a critical health care marketplace and harm its beneficiaries who require DTS.

### **Competitive Bidding**

AAHomecare has long considered reimbursement rates established through the Medicare DMEPOS Competitive Bidding Program to be inaccurate. We believe that the incentives created by the bidding program have led to artificially low reimbursement rates—particularly in the diabetic arena. And, therefore, these prices should not be used as a data point to reduce reimbursement rates through inherent reasonableness. For example, CMS used the median bid to set reimbursement rates—thus half of all suppliers are being paid less than what they bid. The 9 competitive bidding areas allow providers to “revenue shift” taking revenue from non-bid areas to offset pricing established in bidding areas. Further and equally important, both formal and informal studies have shown that contract mail order diabetic suppliers are not offering the same product mix as other suppliers in non-bidding areas. The association has examples where CMS has directed Medicare beneficiaries who receive their testing supplies through the mail to retail settings if their mail order supplier did not carry the type of testing supplies the beneficiary was accustomed. This would indicate that pricing through competitive bidding for DTS is too low.

### **Price Setting**

While a general process has been outlined to gather pricing data for developing pricing data under Medicare’s inherent reasonableness authority, we are concerned with the methodology that CMS will use to set reimbursement rates for retail DTS. We believe that CMS must clearly articulate how the Agency will set reimbursement rates using inherent reasonableness authority.

Additionally, we would strongly argue against using Medicare’s gap filling methodology. We believe that the current gap filling methodology has serious flaws in it—such as deflating pricing data to 1986-1987 and then re-inflating the pricing to present day based on annual consumer price index updates and arraying the pricing data and setting the allowable using the median price of the products contained in the array. We believe that all items and associated services that fall within a code are covered by the allowable. AAHomecare would recommend using the “clearing price” rather than the median price.

### **Regulatory Burden and Other Costs**

Inherent reasonableness authority applied to Medicare covered items should take into consideration the regulatory burden and other costs associated with the provision of any item to Medicare beneficiaries. Claims processing, audits, supplier standards, quality standards, surety bonds and general and administrative costs should be considered as costs related to the provision of DTS. With error rates approaching 100 percent in the diabetic testing arena, suppliers have had to hire dedicated staff to respond to audits and navigate the appeals process.

We would be remiss to neglect the need for CMS to evaluate the documentation burden associated with furnishing diabetic testing supplies and all other DME items covered by

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Medicare. AAHomecare has gone on record stating the need to simplify the coverage policy for DME items—including DTS—and have claims evaluated in a consistent and unambiguous manner.

**Transparency**

Finally, we would like to raise the issue of transparency. In its Federal Register notice, CMS cites other pricing as rational for IR. With all regulations, we would ask that CMS provide their data for public inspection and comment. If providers have access to this information, we may be able to better provide CMS with information to develop sound pricing policy that is based on actual market forces.

AAHomecare looks forward to working with CMS to address cost, quality, and access for DTS. Thank you for the opportunity to comment on inherent reasonableness. If you have any questions regarding our position, please contact Peter Rankin at [peterr@aahomecare.org](mailto:peterr@aahomecare.org) or 703-535-1896  
Sincerely,



Walter J. Gorski  
Vice President of Government Affairs