

September XX, 2018

The Honorable Seema Verma, Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

The Honorable Alex M. Azar II, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Mick Mulvaney, Director
The Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

Dear Administrator Verma, Secretary Azar, and Director Mulvaney:

We are writing today in regard to the July 11, 2018 [ESRD/DMEPOS Proposed Rule](#). In recent years, CMS has made significant policy and regulatory changes that have resulted in substantial reductions in reimbursements. We continue to have concerns that these reductions have caused access issues for Medicare beneficiaries, particularly those in non-Competitive Bidding Areas, and shifted costs to other areas of Medicare. We appreciate the Agency's continued attention to this matter and look forward to working together to improve the Competitive Bidding Program and ensure beneficiary access to this cost-effective and patient-preferred model of care.

We support several policies in the Proposed Rule. For example, we appreciate the Agency's proposal to suspend the next round of bidding until new methodology is finalized and implemented. We urge you to continue to work with Congress, stakeholders, and auction experts to make further reforms and refinements to ensure the bid program derives market-based reimbursement rates, while protecting beneficiaries' access to durable medical equipment. We are also encouraged by the Agency providing additional relief to rural and non-contiguous areas until the end of 2020. Lastly, we appreciated CMS's expression of concern about beneficiary access to liquid oxygen services.

While we appreciate the Proposed Rule's attempt to provide some relief to DME suppliers, we believe that the proposal could have gone further to make real progress in ensuring access for patients in need of critical durable medical equipment. We are writing to urge you to use your authority to make the following reforms before the ESRD/DMEPOS proposed rule becomes final:

1) Increase Reimbursement Rates in Competitive Bidding Areas During Gap Period - In the Proposed Rule, the Agency suggests applying the current competitive bidding single payment amounts (SPAs), plus an inflation index, in the former competitive bid areas, until the next round of bidding can be implemented. Since CMS has recognized these SPAs are deficient due to the bid program's median price methodology, we are concerned that these rates are inadequate, particularly when there no longer remains the increased market share that was the balancing rationale for the lower bid prices in the first place. We

urge you to increase the reimbursement rates in competitive bidding areas in the period before the next round of bidding is implemented.

2) Provide Relief for all Non-Competitive Bidding Areas - In the Proposed Rule, the Agency suggests providing relief to rural and non-contiguous areas at the 50/50 blended rate until the end of 2020. We are pleased that you plan to provide additional relief in these areas, but believe the relief is necessary in all non-competitive bidding areas. In the 21st Century Cures Act, Congress recognized the access issues caused by the reductions in reimbursement and provided relief to all non-competitive bidding areas (P.L. 114-255 sections 16007 and 16008). We urge you to provide the 50/50 blended rate to all non-competitive areas until the end of 2020.

3) Improve Access to Liquid Oxygen – We appreciate the Agency’s expression of concern about beneficiary access to oxygen in general and particularly liquid systems. Payment insufficiencies and changing delivery models have added new stress to the home oxygen industry and beneficiaries are suffering the consequences. We urge the Agency to consider a more comprehensive effort to modernize its Medicare oxygen policies, including those for liquid oxygen, to ensure appropriate beneficiary access to medically needed respiratory therapy and would look forward to a collaborative approach that involves all stakeholders. We will look forward to working together if legislative action is necessary in improving access to appropriate oxygen therapies.

In your leadership roles at our nation’s principal healthcare agencies, you have an opportunity to correct the procedural and substantive deficiencies with the current DMEPOS Competitive Bidding Program and related reimbursement rates in non-competitive bid areas. We respectfully urge you to use your authority to make significant reforms in these areas, which will protect beneficiary access to DME items they require.

We appreciate your consideration of these reforms and look forward to your response.

Sincerely,

Cathy McMorris Rodgers
Member of Congress

Brett Guthrie
Member of Congress

Dave Loebsack
Member of Congress

Diana DeGette
Member of Congress