

July 13, 2009

Secretary Kathleen Sebelius  
Secretary of Health and Human Services  
200 Independence Avenue, SW, Room 615F  
Washington, DC 20201

Dear Secretary Sebelius,

I/We write to convey concerns regarding the CMS Competitive Bidding Program for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS). Reports from stakeholders about the current bidding process created by the previous administration suggest that the quality of DMEPOS products and services for Medicare beneficiaries may be threatened.

The administrative process and technical issues are the main areas of concern brought to my/our attention. Ongoing modifications to the online applications appear to have created significant obstacles for suppliers during the application process. This submission process reportedly led to numerous errors which burdened applicants and led to technical disqualifications. It has also come to my attention that CMS may have referred suppliers to credit bureaus who did not provide required information. I/We are told that this problem was not addressed until after the bids were already awarded. A lack of transparency may have further complicated relations with the DME suppliers, while guidance for bid evaluation may have also been overlooked. I/We are told that numerous bidders were disqualified without reason or recourse and that many suppliers were forced to desperately “blind bid” below sustainable rates to retain Medicare beneficiaries or leverage competition.

In addition, it has come to my/our attention that the current administrative process for competitive bidding may not adequately account for the complex regulatory oversight of this industry, nor does it acknowledge the impacts on third party payer systems which dominate the markets. Stakeholders report that limiting services to ‘contracted providers’ may thwart competition among the majority of small or medium suppliers and disproportionately benefit national conglomerates, which often leverage purchasing power to dominate with lower bids. Stakeholders fear that this, in turn, may reduce quality and support for patients.

A final concern brought to my/our attention involves beneficiaries who may need multiple competitively bid products and services. I/We are told that if a patient needs a hospital bed, walker, and oxygen, the medical team may need to coordinate three different contractors to provide each of the home-based services prior to discharge. This means that hospitals may be unable to secure the necessary equipment for timely discharge, forcing additional costs to patients and government, since it is possible for the contracted Medicare supplier to win the Medicare contract, yet not be contracted with the secondary payers (e.g., Medicaid, Medicare Advantage plans, etc.).

In summary, I/we write to you about protecting patient access to home medical equipment. Stakeholders and constituents fear that the currently structured bidding program will lead to increased government waste and further compromise patient’s access to critical homecare services. They warn of shortages of suppliers (increasing monopolies and fraud), closing of smaller community-based suppliers, and reducing competition, which could ultimately lead to price increases.

A possible solution may be to add an “any willing provider” rule to allow any Medicare supplier to continue providing services so long as they are willing to accept the newly contracted Medicare reimbursement rates. This may better maintain the competitive nature of the industry as it is today and help postpone the closure of many domestic and often rural businesses nationwide.

Please let me/members of Congress know if I/we can help address any of the matters brought to your attention in this letter.

Sincerely,

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Senator Ron Wyden  
U.S. Senator

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