

May 20, 2008

The Honorable Fortney H. (Pete) Stark, Chair
The Honorable Dave Camp, Ranking Member
House Ways & Means Subcommittee on Health
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

RE: Hearing on Medicare DMEPOS Competitive Bidding Program

Dear Chairman Stark and Ranking Member Camp:

The Power Mobility Coalition (PMC), a nationwide association of suppliers and manufacturers of motorized wheelchairs and power operated vehicles, applauds the House Ways and Means Subcommittee on Health for holding a hearing examining the problems implementing the competitive bidding program for Medicare durable medical equipment, prosthetic and orthotic supplies (DMEPOS).

As numerous witnesses at the hearing testified, various bidding irregularities were identified and an inordinate number of suppliers were unfairly disqualified during the first round of bidding. According to the American Association for Home Care, nearly two-thirds of accredited qualified DMEPOS suppliers who submitted bids were disqualified in the first round.¹

Moreover, single payment amounts for competitively bid DMEPOS items in the impacted Metropolitan Statistical Areas (MSAs) resulted in a 26% cut under current fee schedule amounts. For power mobility devices (PMDs), this translates to a 21% decrease across the ten impacted MSAs. This cut comes on the heels of a 27% reduction in PMD reimbursement when CMS established a new PMD fee schedule in November, 2006. In just 17 months, therefore, PMD reimbursement will have been reduced by nearly 50% in competitive bidding areas.

¹ See, Testimony of Mr. Thomas Ryan, former chairman of the American Association for Homecare, at p. 2 (May 6, 2008)

Even without these competitive bidding rates being implemented, utilization for PMDs has already been negatively impacted. According to CMS' own projections, 243,000 prescriptions for PMDs were expected to be written in 2007.² SADMERC data shows, however, that only 180,000 PMDs were provided by Medicare or 30% (57,000 beneficiaries) *below* CMS' own forecast.

As a result of these bidding irregularities, the possibility of systemic problems in the bidding process and the further cuts in DMEPOS reimbursement that threaten service and access, the PMC supports efforts to delay implementation of the program until the all problems and irregularities in the bidding process have been identified and resolved in a manner that will ensure beneficiaries access to high quality DMEPOS items.

In the alternative, the PMC offers the following recommendations to improve the competitive bidding program by establishing a more level playing field among bidders, compelling greater supplier participation and establishing safeguards to ensure beneficiary access. These recommendations include:

- **Increasing Transparency in the Bidding Process**

The current bidding process is shrouded in secrecy increasing the mistrust between bidders and the Competitive Bidding Independent Contractors (CBIC). The PMC recommends that the CBIC share bidding methodology and criteria used to establish the single payer amounts in impacted MSAs. The PMC recommends that the CBIC release a report, shortly after it awards contracts in each bidding round, which sets out:

- 1) number of total unique bidders;
- 2) number of bidders awarded contracts;
- 3) criteria of how bidders financial statements were evaluated;
- 4) how utilization and capacity was evaluated;
- 5) was accreditation reviewed; and
- 6) how the single payment amount was calculated for each MSA.

² See, CMS-10116 Medicare Program; Conditions for Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles (CMS-3017-IFC) (April 27, 2007).

- **Allowing Suppliers the Ability to Correct Minor Errors or Omissions**

As numerous witnesses at the hearing testified, many suppliers were unfairly disqualified from the initial round of competitive bidding because of missing information on their bidding application or confusion surrounding bidding instructions. Some of these applications could have been easily corrected and suppliers could have avoided disqualification if they had an opportunity to cure these applications prior to deadline. The PMC recommends that CMS instruct the CBIC to alert suppliers within 30 days of submission if their applications contain some minor errors or omissions and, further, provide suppliers with 10 days to make corrections and resubmit the application.

- **Establishing an Appeals Process**

Under the competitive bidding rules, suppliers have no administrative or judicial review for “the awarding of contracts” under the competitive bidding program.³

The PMC has concerns that CMS can conduct the competitive program without any opportunity for administrative or judicial oversight of the process. Considering the number of procurements that are set aside each year by the General Accountability Office (GAO) and the United States Court of Federal Claims based upon government error, it is inconceivable that CMS would even suggest such a secret and insulated process. This is a recipe for arbitrary and erroneous awards.

Suppliers who have a reasonable grievance should be able to challenge a determination of the CBIC before an independent entity or Administrative Law Judge to ensure fairness and due process. Suppliers will be staking resources and, in certain instances, survival of their business on contracts awarded by the CBIC. As a result, suppliers must be afforded the right to contest questionable determinations. Further, to ensure no disruption in DMEPOS services to beneficiaries, any independent appeals process must be expedited.

³ See, 42 U.S.C. § 1847(b)(10).

As a result, the PMC recommends that Congress require any competitive bidding program to be subject to the traditional judicial review of procurements conducted by the government.

- **Providing COLA Increase for Single Payment Amounts**

CMS should allow for cost of living adjustments (COLAs) to single payment amounts determined under the bidding process. COLA increases will ensure that suppliers are fairly compensated if costs increase as a result of inflation or other economic pressures. Such an adjustment, moreover, will ensure that suppliers won't have to cut back on quality or services in order to continue participation in the Medicare program and will aid suppliers in meeting capacity targets set out in the bidding contracts.

- **Monitoring Supplier Capacity and Allow the CBIC to Make Mid-Course Corrections**

At the hearing, the GAO recommended that CMS closely monitor competitive bidding, through beneficiary and supplier surveys and other oversight, to ensure access and that contracted supplier's meet capacity. The PMC recommends that CMS give the CBIC the authority to contract with new suppliers if GAO reports potential beneficiary access issues as a result of suppliers failing to meet capacity for a particular product in a particular MSA.

- **Requiring at Least a 10% Savings Before a DMEPOS Item Can be Subjected to Competitive Bidding**

Given the costs to the Medicare program in establishing and implementing the competitive bidding program, the PMC recommends that CMS exempt those items and services for which the application of competitive bidding is not likely to result in significant savings of at least 10%. This will ensure the outlays made by the Medicare in implementing a bidding process will pay off in a net savings to the program.

- **Prohibiting CMS from Extending Single Payment Amounts Beyond Competitive Bidding Areas**

Under competitive bidding rules, CMS has the authority to extend single payment amounts for DMEPOS items to areas that have not been subjected to competitive bidding after 2009. The PMC recommends that Congress repeal this authority since reimbursement reductions in rural or underserved areas will further exacerbate beneficiary access and jeopardize the mostly small, “mom and pop” operations that serve these communities. Suppliers who serve rural and underserved areas have to travel great distances to service beneficiaries and often their costs are higher since they serve fewer patients and cannot take advantage of volume discounts.

- **Establishing a Serial Number Tracking Program for DMEPOS Items**

CMS has characterized competitive bidding as an additional anti-fraud tool. Since the late 1990’s, the agency has testified to Congress that more needed to be done to address fraud and abuse. In 2001, former Health and Human Services (HHS) Inspector General, June Gibbs-Brown testified to Congress that the two primary issues the Medicare faces with DMEPOS suppliers is paying for products never delivered and/or paying for more expensive items than what was actually delivered to the Medicare beneficiary.

Rather than punitively punishing legitimate providers by drastically reducing the fee schedule, the PMC recommends that CMS establish a serial number identification program that can track individual DMEPOS items through the claims process. Under such a system DMEPOS manufacturers could report serial numbers to be included in a CMS data base. Suppliers would then have to include the serial number on their claims, allowing CMS to monitor and track supplies from manufacturer to supplier to beneficiary.

The PMC appreciates the opportunity to comment on the establishment and implementation of the competitive bidding program for Medicare DMEPOS items. The PMC agrees with many members of the Subcommittee who question CMS’ characterization of the program’s implementation and urges Congress to delay any further implementation of the program or, in the alternative, implement the above-described recommendations.

The PMC wishes to note that the Medicare PMD benefit provides thousands of beneficiaries with freedom, independence and the ability to live healthier and more active lives. PMDs save the Medicare program resources by keeping beneficiaries with compromised or limited mobility out of more costly institutional settings and decreasing their need for hospitalizations by making them safer in their environments. We look forward to working with the Subcommittee on appropriate competitive bidding program safeguards to ensure that qualified beneficiaries maintain access to high quality DMEPOS items and services, including PMDs

Respectfully Submitted,

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PMC Director

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PMC Counsel