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Mr. Charles Johnson
Acting Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Ms. Charlene Frizzera
Acting Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, SW, Room 445-G
Washington, DC 20201

Dear Acting Secretary Johnson & Administrator Frizzera:

Last year, Congress, through the Medicare Improvements for Patients and Providers Act (MIPPA), delayed the Medicare Durable Medical Equipment Prosthetics, Orthotics and Supplies (DMEPOS) competitive bidding program for a period of 18-24 months. As you are aware, however, within six months of the delay and on the last day of President Bush's tenure, the Centers for Medicare and Medicaid Services (CMS) issued an interim final rule (IFR) that would prematurely implement the competitive bidding program.

It appears to me that CMS is ignoring a Congressional Directive by issuing the rule without any meaningful review of the fundamental flaws that are imbedded the program. I am requesting, therefore, that you rescind the IFR and delay any scheduled implementation of competitive bidding until the data from the aborted first round is properly examined and analyzed.

By issuing an IFR instead of a proposed rule, CMS bypassed the traditional notice and comment process that takes place prior to implementation. I do not agree with CMS that there was good cause to waive the notice and comment procedure as impracticable, unnecessary, or contrary to the public interest in this instance. In fact, intent of the Congressional delay was to provide time to learn lessons from the aborted first round of bidding and to identify concerns and solicit recommendations from impacted stakeholders.

I am also concerned that the IFR does little to address the numerous problems, already identified, that plagued the bidding process including glitches that marred timely provider enrollment, providers being unfairly disqualified and accusations of providers gaming the bidding process in certain product categories.

I realize that CMS, at the request of the Obama Administration, has put off the implementation date of the IFR 60 days until April 18, 2009. However, this delay does not require CMS to solicit feedback or address outstanding issues of concern. As a result, I am urging you to rescind the IFR to ensure that Congress intent is being adhered to and problems that plagued the initial round of DMEPOS competitive bidding are identified and rectified prior to any implementation of this program.

Sincerely,

U.S. Senator

Dear PMC Members:

Rep. Betty Sutton (D-OH) is circulating a letter to Members of the House of Representatives calling for the Centers for Medicare and Medicaid Services (CMS) to rescind the interim final rule (IFR) on the DMEPOS competitive bidding which is scheduled to be implemented on April 18th.

The PMC is urging all power mobility device (PMD) stakeholders to contact **all the Representatives who represent you, your business and your patients** and ask them to sign-on to the Sutton "Dear Colleague." Deadline for signatures is April 14th, so its imperative for stakeholders to call their Congressional representatives today!

To ensure your Senate delegation is being heard, the PMC has attached a copy of a "sample letter" that can be used by Senators to contact the Department of Health and Human Service and CMS to rescind the IFR. Without bi-cameral (and bi-partisan) support, it will be much more difficult to put the requisite pressure on CMS to force them to rescind the rule.

A copy of the Sutton letter and the sample letter for Senators is attached. To contact your Member of Congress you can call the Capitol Hill switchboard at 202-225-3121

**Rescind the CMS Interim Final Rule on the Durable Medical Equipment
Competitive Bidding Program**

Deadline: COB April 9, 2009

April 3, 2009

Dear Colleague:

I am writing to encourage you to join with me in sending the attached letter to the Acting Secretary of Health and Human Services Charles Johnson, the Acting Administrator of CMS Charlene Frizzera and the Director of White House Office of Health Reform Nancy-Ann DeParle regarding the CMS interim final rule on the durable medical equipment (DME) competitive bidding program.

The Medicare Modernization Act of 2003 established the competitive bidding program for durable medical equipment. However, initial implementation of the program was poorly executed by CMS. The process shut out many DME providers, thus limiting access to durable medical equipment for beneficiaries. This is why Congress mandated an 18-24 month delay to the competitive bidding program in the Medicare Improvement for Patients and Providers Act that was enacted on July 15, 2008.

On January 16, 2009, CMS issued an interim final rule which would establish a durable medical equipment competitive bidding program on April 18, 2009. The agency's rush to implementation provides no opportunity for public comment and subverts the will of Congress. The interim rule will have a detrimental effect on the quality and access to care for beneficiaries of durable medical equipment.

This is why it is important for CMS to rescind this interim rule. At a minimum, the agency should pursue traditional notice and comment rulemaking to ensure participation of interested parties prior to issuing a final rule.

I hope you will consider joining with me in urging the Administration to rescind this final interim rule. If you have questions or would like to sign the letter, please contact Carla McNeill in my office at Carla.McNeill@mail.house.gov or 5-3401.

Sincerely,

Betty Sutton
Member of Congress

April 3, 2009

Mr. Charles Johnson, Acting Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Ms. Charlene Frizzera, Acting Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Ms. Nancy-Ann DeParle, Director
White House Office of Health Reform
The White House
Washington, D.C.

Dear Acting Secretary Johnson, Acting Administrator Frizzera and Ms. DeParle:

On January 16, 2009, the Centers for Medicare and Medicaid Services (CMS) published an interim final rule on the durable medical equipment (DME) competitive bidding program effective April 18, 2009. We are deeply concerned that CMS has rushed implementation of this rule counter to Congress' intent when it delayed the competitive bidding program as part of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). As such, we urge you to rescind the rule so that all affected parties will have an opportunity to comment on it as a proposed regulation.

In the initial implementation of the durable medical equipment competitive bidding program, many questions were raised as to the immediate impact of the program on quality and access to care for patients. Of particular concern was the immediate elimination of thousands of eligible providers throughout the country from the Medicare program. Of the more than 4,000 providers in the initial bidding areas, only 376 were deemed to have met the bidding program requirements, which were not clearly defined by CMS and its contractor. As growing numbers of seniors enter the Medicare program, it is important that we take care to maintain an adequate number of qualified and capable providers to address demand for care in the home, especially in rural areas.

The agency's stated rationale in its interim final rule for not electing to pursue the traditional notice and comment rulemaking was that "statutory language was highly prescriptive and it would be redundant to propose a rule to incorporate the words of a provision already contained in statute." In fact, we remain concerned that many of the recommended changes designed to prevent future access problems and confusion in the competitive bid process were not

incorporated or even raised for public comment. Any final rulemaking on this program should at a minimum provide assurances that the alleged discrepancies between information submitted by bidders and received by CMS will not again result in the unfair disqualification, without appeal, of longstanding companies in our states who have offered quality homecare services for decades. CMS also needs to ensure that its contractor is consistently and properly applying the standards established to qualify suppliers for participation in the program, notably a supplier's demonstrated capacity to serve a given area and patient population.

We agree that MIPPA addressed near-term concerns with the program, but thoughtful and deliberate rulemaking by CMS was clearly anticipated by Congress. Under the circumstances, it would be much more appropriate for CMS to utilize traditional notice and comment rulemaking ensuring a collaborative and transparent process, and program success.

Thank you for your consideration and we look forward to your response.

Sincerely,