



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

May 5, 2008

The Honorable Fortney H. “Pete” Stark
Chairman
Ways and Means Health Subcommittee
US House of Representatives
Washington, DC 20515

The Honorable Dave Camp
Ranking Member
Ways and Means Health Subcommittee
US House of Representatives
Washington, DC 20515

RE: Impact of DME Competitive Bidding on Medicare Beneficiaries with Disabilities and Chronic Conditions

Dear Chairman Stark and Ranking Member Camp:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) are writing to state our concerns with the pending Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding program and its impact on beneficiaries with disabilities and chronic conditions. We have several specific requests to protect consumers which include a delay in the implementation of the program, specific protections and options for individuals with the most significant disabilities, and administrative safeguards if and when the program is implemented.

The CCD is a coalition of national disability-related organizations working together to advocate for national public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

Many CCD members have opposed the DMEPOS competitive bidding program since the negotiations on the Medicare Modernization Act of 2003 (“MMA”). This is because we believe this program disproportionately impacts and unfairly places at risk some of Medicare’s most vulnerable beneficiaries—individuals with disabilities and chronic conditions. We fail to see why Congress and the Administration would single out vital assistive devices and technologies under the Medicare fee-for-service program to be provided by the lowest bidder when other benefits are not exposed to this potentially harmful practice.

If beneficiaries are not concerned about provider choice and would prefer to lower their copayments, they have a simple solution available to them: they can join a Medicare Advantage plan. But if they choose to remain in the fee-for-service program, their choice of supplier should not be restricted unless the supplier is not qualified to provide the benefit.

To be sure, CCD is not opposed to adjusting reimbursement levels for items and services under Medicare to make them more reasonable for beneficiaries. And we recognize the benefits to consumers of lower reimbursement levels in the form of reduced co-payments. However, there are currently mechanisms in place to adjust reimbursement levels such as the inherent reasonableness process. It is our strong belief that the modest decreases in co-payments that will result from the competitive bidding program simply do not outweigh the price that consumers with disabilities and chronic conditions will pay in the form of access, quality and choice.

Consumer Concerns With Competitive Bidding for DMEPOS

As CMS begins to implement phase I of the national DMEPOS Competitive Bidding program, we are hearing from our members and numerous other stakeholders regarding the potential threats to access and quality of assistive devices and technologies under this program. As a result, we have objectively analyzed the program and have listed our primary concerns below.

- 1.) ***Decrease in the Quality of Devices, Products, and Technologies:*** CMS estimates that, on average, the price Medicare will pay suppliers for the targeted products is 26% lower than current payment rates. The dramatic price reductions provide disincentives to suppliers to offer the highest quality devices and products. The likely decrease in the quality of assistive devices and technologies, especially highly individualized or complex devices and technologies, threatens the ability of the beneficiary to be as functional and independent as possible. Additionally, the use of improper equipment could result in related medical complications (e.g. bed sores, shoulder injuries) for the individual and the costs of treating these complications will likely diminish significantly the cost savings from competitive bidding. Furthermore, because many private payors take their reimbursement cues from Medicare, we expect that individuals with private insurance will eventually face many of the same quality issues as Medicare beneficiaries when competitive bidding is implemented.

- 2.) ***Access to Related Services:*** Often individuals with significant disabilities such as spinal cord injuries, cerebral palsy, multiple sclerosis, and amyotrophic lateral sclerosis (“ALS”), require assistive devices that must be fitted and/or programmed to meet their individual needs. In addition, technology assessments and home evaluations are often performed in order to ensure that the appropriate equipment is provided. Suppliers often have 24-hour hotlines for emergency service and strive to maintain quick turn-around times on repairs. With the significant decrease in reimbursement to suppliers for the competitively bid items and, from what we understand, the inexperience of many of the potential contract suppliers to provide the benefits they have been selected to provide, CCD members are extremely concerned that these related services will either be restricted or no longer be available to consumers. We would like to make clear that time-consuming services provided to beneficiaries such as fittings, refittings, evaluations, programming, repairs, etc., are not optional services, but instead, are vital to the safe and effective use of many assistive devices and technologies.

3.) ***Access to Suppliers:*** It is our understanding that suppliers, when bidding, offered CMS an estimate of the percentage of the population in a metropolitan statistical area (“MSA”) that they believed they would be able to serve. CMS then used these estimates to determine which suppliers would be offered Medicare contracts without, apparently, conducting any independent verification of these supplier estimates. It is also our understanding that CMS expected approximately 15,000 bids to be submitted for the first round of the program but received just 5,000. We also understand that across the 10 MSAs, CMS only offered 1,300 contracts to suppliers, even though they expected to award 9,000. We expect the result to be a significant decrease in the number of suppliers available to Medicare beneficiaries. This limitation in access to the provider of choice means a great deal to people who have developed close personal and clinical relationships with their DMEPOS suppliers. CCD is very concerned that the huge decrease in the number of suppliers in the MSAs and the unverified manner in which CMS has determined the number of suppliers necessary in each MSA will result in serious access problems.

Additionally, it is important to note that many individuals will also face the new and difficult burden of physically accessing a new supplier who is located much farther from their home or in a location that is more difficult for them to access. For individuals with severe disabilities, this new burden cannot be underestimated.

4.) ***Impact on Consumer-Supplier Relationships:*** Many Medicare beneficiaries may wake up on July 1st to find that they can no longer purchase items from their supplier who they have worked with for many years, has detailed knowledge of their disability and related conditions, and a history of providing them with the most appropriate devices to meet their needs. These long-standing consumer-supplier relationships could be considered one of Medicare’s best defenses against fraud and abuse and an important quality indicator; however, many of these relationships will be broken as a result of the competitive bidding program.

5.) ***Access to Brand Name Devices:*** Individuals who use assistive devices will tell you that consumer preference for a specific brand is an important factor when determining the most appropriate device. Competitive bidding will force many individuals to switch to new suppliers who may not offer the same brands of devices that they are accustomed to using. A forced substitution in brand could significantly impact the functional level of an individual, thereby impacting their health and functional status.

Policy Recommendations to Congress

Congress strategically enacted the competitive program to be phased-in over a several- year period by 2010. Unfortunately, because CMS fell behind in the implementation of the first round, to now be implemented in 10 MSAs on July 1st, the agency has accelerated the implementation of the second round, to be implemented in 70 MSAs next year, in order to meet the 2010 deadline. Because of this accelerated timeline and the consequential lack of data on the impact of the program on consumers, time is of the essence for Congress to act to protect beneficiaries.

CCD is making the following requests to Congress in order to protect consumers with disabilities:

- 1.) ***Delay implementation of the first round of competitive bidding until significant flaws in the selection process and number of suppliers are addressed and until safeguards are in place to protect the consumer.***
- 2.) ***Delay the second round of DMEPOS competitive bidding in order to allow CMS and stakeholders appropriate time to assess and address the impact of the first round on people with disabilities and chronic conditions.***
- 3.) ***Exempt items from competitive bidding that must be uniquely “fitted” and individualized for the specific user.*** CCD supports the Medicare Access to Complex Rehabilitation and Assistive Technology Act (HR 2231), legislation to carve-out complex assistive technology and devices such as seating, positioning, and mobility devices and speech generating devices from the competitive bidding program, with the goal of protecting appropriate access.
- 4.) ***Allow beneficiaries with disabilities and chronic conditions to keep their current supplier under the competitive bidding program in order to ensure continued quality and choice of supplier.*** One method may be to allow Medicare beneficiaries to “opt-out” of the competitive bidding network and continue accessing their supplier of choice at the Medicare DMEPOS fee schedule amount. Quality would be ensured as consumers would have the right to pay less under competitive bidding or continue to pay a higher co-payment with their long-standing suppliers. Considering the potential for significant disruptions in service if the first round of competitive bidding proceeds on July 1st, this proposal seems imminently reasonable, at least for the first year or two of implementation.
- 5.) ***Establish a separate toll-free number and ombudsperson for beneficiaries to use regarding competitive bidding questions and concerns.*** Consumers will have numerous and important questions regarding the changes in the DMEPOS benefit and a specific toll-free number and access to an ombudsperson are important safeguards in implementation of this program.

CCD is very concerned that competitive bidding will significantly threaten access to and quality of assistive devices and technologies that are essential components of the health and independence of individuals with disabilities and chronic conditions. We call on Members of Congress and the Administration to delay implementation of the program and initiate appropriate safeguards to ensure that individuals with disabilities are not harmed by the upcoming changes in this important benefit.

We thank you for your consideration and look forward to working with you on this important issue. Please contact the Peter Thomas (202-466-6550), Liz Savage (202-783-2229), or Kathy McGinley (202-408-9514) with any questions.

Sincerely,

American Association of People with Disabilities
American Foundation for the Blind
American Medical Rehabilitation Providers Association
American Occupational Therapy Association
America Physical Therapy Association
Association of Assistive Technology Act Programs
Association of University Centers on Disabilities
Brain Injury Association of America
Disability Rights Education and Defense Fund
Easter Seals
Independence Care System
Lutheran Services in America
National Association of Social Workers
National Disability Rights Network
National Multiple Sclerosis Society
National Rehabilitation Association
National Spinal Cord Injury Association
Paralyzed Veterans of America
The Arc of the United States
United Cerebral Palsy
United Spinal Association

CC: The Honorable Charles Rangel
The Honorable John Dingell
The Honorable Jim McCrery
The Honorable Joe Barton