



**AUG 30 2010**

The Honorable Jason Altmire  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Altmire:

Thank you for your letter regarding the Medicare competitive bidding program for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) and your concerns about the program's ability to meet the medical needs of your constituents. The Centers for Medicare & Medicaid Services (CMS) greatly appreciates your bringing these concerns to our attention and wants to assure you that we share your desire to provide high quality access to care for all Medicare beneficiaries.

In particular, we share your commitment to ensuring that qualified suppliers are selected to participate in the DMEPOS competitive bidding program. Having learned from our initial experience in 2008, we are working aggressively to improve operational processes for the program, address stakeholder concerns, and implement the changes required in the Medicare Improvements for Patients and Providers Act of 2008. To that end, we are dedicating extensive resources within CMS to implement the program in a transparent, orderly, and effective way. In addition, we have held numerous meetings with the Program Advisory and Oversight Committee (PAOC) soliciting their input on all aspects of the competitive bidding program.

The current Medicare fee-for-service DMEPOS benefit is plagued by an obsolete pricing methodology, grossly inflated prices, and a well-documented proliferation of fraud. The Department of Health and Human Services' Office of Inspector General, the Government Accountability Office, and other independent analysts have repeatedly highlighted that the prices paid by Medicare for certain DMEPOS items are excessive, sometimes three or four times retail prices and the amounts paid by commercial insurers. The inflated prices, in turn, increase the amount beneficiaries must pay out of pocket for these items.

The DMEPOS competitive bidding program is an essential tool to help CMS pay appropriately for health care—important not only to maintain Medicare beneficiaries' access to high quality medical products, but also to lower costs for beneficiaries and the Medicare program. The program provides proven value to consumers and taxpayers by lowering the cost of medical products, while ensuring consumer access to accredited suppliers that meet stringent quality and financial standards. It also strengthens protections against fraud. By establishing fair, market-based prices for DMEPOS, the competitive bidding program makes such items and supplies a less tempting target for abuse. In addition, contract suppliers will be closely monitored under the program, which reduces the ability of such suppliers to engage in fraudulent activity.

To ensure qualified suppliers are selected to participate in the DMEPOS competitive bidding program, CMS significantly increased our scrutiny of bidders on the front-end, instituting a number of critical improvements to the supplier selection process for the Round One Rebid. For example, we conducted an extremely rigorous and comprehensive verification of bidder compliance with licensure and accreditation requirements early in the bid evaluation process. In addition, we carefully scrutinized supplier capacity statements and expansion plans to verify that suppliers will be ready on day one to begin operating at the level reported in their bids. We included this more intensive review after consultation with members of the PAOC who had raised concerns about bidders entering a new area or product category. We also screened and evaluated all bids to ensure that they represent a rational and feasible payment for furnishing the item (i.e., that they are bona fide). In so doing, we verified that the supplier can furnish an item at the listed bid amount by reviewing additional information beyond that collected in 2008, such as supplier rationales that support documentation like manufacturer's invoices. We believe these process improvements that we have conducted and the intense scrutiny of bidders will result in a fair and effective supplier selection process, addressing the concerns raised following Round One about the need to ensure that suppliers serving Medicare beneficiaries under the program are appropriately qualified.

Another key part of CMS' efforts to implement the competitive bidding program in a transparent, orderly, and effective way is the timing of the announcement of the contract suppliers. While we agree that transparency is important and Congress and the public should have access to the list of final contract suppliers in a timely manner, we do not believe it would be appropriate or in the public interest to release any bidders' names before the contracting process is complete, as there are a number of risks associated with doing so.

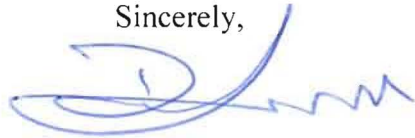
First and foremost, we believe that providing a series of interim lists of suppliers would result in beneficiary confusion, undermining the orderly and effective implementation of the program. In addition, we have not yet notified the suppliers whose bids were not among the winning bids and we believe that these suppliers should be notified before the names of the suppliers with winning bids are released to the public. Further, announcing a subset of suppliers before the contracting process is complete could be viewed as giving those suppliers an unfair competitive advantage.

In addition, the premature release of information may jeopardize the procurement process itself. At the request of the DMEPOS industry, the Request for Bids, which outlined the requirements governing the bid submission and evaluation process, indicated that bidder information could only be disclosed in an anonymous or aggregate format and that proprietary information would be protected from disclosure. Further, standard procurement rules prohibit disclosing the identities of bidders until after contracts are final. Under the DMEPOS competitive bidding program, the contracting process is not complete and contracts are not awarded until CMS signs the contracts, and CMS does not sign the contracts until all of the contract suppliers have signed. Although this is a fairly time-consuming and labor-intensive process, we anticipate that the contracts will be signed by all parties by the end of September. CMS is committed to publicly sharing the list of final contract suppliers at that time. We would be happy to provide a detailed briefing to you and your staff when this announcement is made.

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We appreciate your interest in ensuring that qualified suppliers are participating in the DMEPOS competitive bidding program and look forward to working with you to implement this important program and achieve our mutual goal of strengthening the Medicare program for all beneficiaries. I will also provide this response to the cosigners of your letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Berwick", with a large, sweeping flourish at the end.

Donald M. Berwick, M.D.