



Supporting Quality Health Care Services at Home

March 26, 2008

Mr. Kerry Weems
Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Weems:

On behalf of the American Association for Homecare and its members who are participating in round one of the Medicare competitive bidding program for durable medical equipment, orthotics, prosthetics and supplies (DMEPOS), we urge the Centers for Medicare and Medicaid Services (CMS) to extend the contract evaluation window for suppliers who have been offered a competitive bidding contract. We also ask the agency to delay any further implementation of this current round until the concerns we raise in this letter are fully examined and addressed.

The contract evaluation window needs to be extended because suppliers who have been offered contracts are faced with inadequate time in which to determine whether to accept the CMS offer.

There is also the critical issue of the many suppliers who have had their bids disqualified. The Association is extremely concerned about errors that have been made during this initial supplier selection process which has resulted in numerous suppliers being improperly and unfairly removed from the bidding program. If these errors are not addressed and round one proceeds as is currently planned, Medicare suppliers and the beneficiaries who rely on their items and services will be irreparably harmed.

Contract Evaluation Window Should be Extended

The Association believes that suppliers who have been awarded the opportunity to contract under the program must be given more than the 10 days outlined in the offer letter to evaluate the contract. Economic conditions have changed dramatically since the bidding period closed. Financial lending practices have changed since September 2007, making it more difficult for suppliers to secure credit. Gas prices and product costs have increased significantly. Moreover, many suppliers had anticipated winning contracts for more of the product categories than they were offered contracts. With the loss of the ability to serve as a Medicare supplier for a broad range of product categories, contract winners need more time to assess the financial impact of the newly established single payment amounts in each competitive bidding area as they gauge their ability to serve that location.

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Round One Implementation Should be Postponed

AAHomecare has been contacted by numerous DMEPOS suppliers in round one who have outlined serious irregularities or mistakes by the Competitive Bidding Implementation Contractor (CBIC). These actions by the CBIC have triggered improper disqualifications of round one bids submitted by durable medical equipment companies in nearly all of the first ten bidding areas. These suppliers have documentation supporting the fact that they submitted complete applications but were disqualified regardless.

The vast majority of examples that we have collected indicate that suppliers who were inappropriately disqualified were removed from the bidding process for reasons related to financial documentation, accreditation or single-bid requirements. The codes cited most often in the cases where we have legitimate documentation raising valid questions about improper disqualification are:

- **BSE-4** – bidder did not submit along with its bid the applicable financial documentation specified in the request for bids (RFB).
- **BSE-3** – bidder did not meet applicable quality standards developed by CMS in accordance with section 1834(a)(20) of the Social Security Act/was not accredited by a CMS-approved accreditation organization.
- **CO-1** – bidder did not submit a single bid for commonly-owned or controlled suppliers.

Disqualification from the supplier selection process has been a severe blow to many DME providers. It is a step that CMS and the CBIC should not have taken lightly, and safeguards should have been in place to ensure the decisions to disqualify were not based on erroneous determinations or other improper considerations. The issues raised here require careful scrutiny and CMS should ultimately ensure that all disqualification decisions were valid. That review, if done thoroughly, will take time. In the case of suppliers improperly disqualified, they need to be reinserted in the supplier selection and contracting process. Postponing further implementation of round one will allow all of this to happen in due course.

Additionally, CMS had previously indicated that it expected to launch an extensive education process to notify beneficiaries, referral agents, suppliers and other stakeholders of the impending changes resulting from the competitive bidding program. Based on the current implementation timeline, CMS appears to be allowing for little more than a month to bring stakeholders up to speed on this program. Also, delays in CMS operationalizing the program leave little time for suppliers to adequately prepare their businesses for increased demand for services, to implement marketing activities and to adjust system operations to accommodate the impending changes. Maintaining the current timeline will cause confusion and interrupt continuity of care for beneficiaries.

Finally, we believe that CMS must be more forthcoming with both the bidding data and the criteria used to evaluate suppliers during this process. Errors and inconsistent guidance from CMS and its contractor have been consistently made throughout the bidding period and the contract award process. Due to the magnitude of the issues at stake with this program, the association appeals to CMS to be fully transparent and allow for an assessment of the application of financial standards criteria, validation of the calculation of the single payment amount for

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HCPCS codes in each competitive bidding area, and more detailed information on the number and type of suppliers that participated in round one.

Based on the concerns cited above, we have identified numerous DME suppliers who are being treated by CMS and the CBIC in a fundamentally unfair manner. The majority of these aggrieved companies have made every effort to comply with the new and complex rules of competitive bidding. The improper determinations and other actions by CMS and its contractor risk doing immeasurable harm to the homecare industry and the patients we serve.

AAHomecare believes that the issues outlined in this letter establish a fair basis for our request for an extension of the contract evaluation period and a delay in further implementation of round one. CMS needs time to understand, examine and respond to the issues we have raised on behalf of our member companies that have been participating in competitive bidding. The integrity of the competitive bidding system and the financial viability of a great many homecare providers are at stake. We respectfully ask to meet with you and your staff to review these concerns. We look forward to your response.

Sincerely,



Tyler Wilson

President

American Association for Homecare

cc: Mr. Herb Kuhn