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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

A. JAY KHOSLA, STAFF DIRECTOR
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May 1, 2018

The Honorable Alex M. Azar II
Secretary
The Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Secretary Azar and Administrator Verma:

I am writing to convey the concerns I have heard regarding two specific aspects of the competitive bidding program (CBP) that determines Medicare payment rates for durable medical equipment (DME) items. These concerns, which are described below, pertain to: the application of rates determined by the CBP to payments for DME items in non-bidding, primarily rural, areas; and the portion of the CBP that governs the provision of diabetes test supplies through a national mail order program. Understanding the Department of Health and Human Services' (HHS) response to these concerns as well as its future plans for the program will greatly inform Congress' deliberations.

Application of Bidding Rates to Rural, Non-bidding Areas

Suppliers and other stakeholders continue to contend that the manner in which the Centers for Medicare and Medicaid Services (CMS) uses the rates established through the CBP to adjust the traditional DME fee schedule amount paid for items in non-bidding, primarily rural, areas, results in rates that are too low to ensure beneficiary access. Congress signaled the importance of appropriately applying bid rates to non-bidding areas by including a provision in the 21st Century Cures Act of 2016 (Public Law 114-255) that delayed the full implementation of the CMS-established fee schedule adjustment by six months. The law also required a report on the extent to which the CMS-established adjustment resulted in supplier closures and impacted beneficiary access that Congress has yet to receive, despite a January 12, 2017 statutory deadline.

Actions initiated by the Trump Administration related to the adjustment of fee schedule payments based on CBP rates appear aimed at ensuring access in rural areas. HHS has submitted an interim final rule to be reviewed by the Office of Management and Budget, the title of which indicates intent to handle the transition to the adjusted rates in the same manner as Congress through the 21st Century Cures law.¹ In addition, President Trump's FY 2019 budget request to Congress contains a proposal to conduct competitive bidding in non-bidding areas, in lieu of adjusting the fee schedule rates based on the competitive bidding amounts.

¹ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=0938-AT21>

I urge HHS to submit the mandated report on the impact of the full rate adjustment on suppliers and beneficiaries and to take appropriate action to ensure access to needed DME items in rural areas, which may include reforms to the underlying CBP bidding structure.

Diabetes Test Supplies National Mail Order Program

Suppliers and other stakeholders in the diabetes community contend that the portion of the CBP that determines the national payment rate for diabetes test supplies (DTS) provided to beneficiaries by mail order has adversely impacted patient health outcomes. These stakeholders, which assert that the consequences are so severe that the CMS should suspend the bidding for DTS, cite the following specific concerns:

- Peer-reviewed research by the National Minority Quality Forum published in *Diabetes Care* found that competitive bidding diminished availability of DTS as to increase mortality, hospitalizations, and associated costs.
- Publicly available CMS “Health Status Monitoring” data that show a steadily increasing number of emergency visits and hospital admissions among beneficiaries with diabetes.
- A reduction in the number of individual beneficiaries who receive Medicare-paid DTS as documented in a September 2016 Government Accountability Office report (GAO-16-570).
- The decrease in the number of suppliers with which CMS contracts to provide mail order DTS, including a drop during the current contract period from the initial nine to six (before CMS subsequently added two suppliers to make up for the lost capacity).

Congress recently demonstrated its commitment to a functional national mail order bidding program by including a provision in the Bipartisan Budget Act of 2018 (Public Law 115-123) that ensures that suppliers can provide the specific types of DTS listed in their bids. I ask for a response to the above concerns to further inform Congress in ensuring that the competitive bidding for DTS provides value while avoiding adverse outcomes that drive care to more costly settings.

Thank you for your attention to these important issues. I look forward to working with you to ensure that beneficiaries in all areas of the country have access to DME items in a way that provides the best value to patients, the Medicare program, and the taxpayers who support it.

Sincerely,



Orrin G. Hatch
Chairman