MDA
Helping Jerry's Kids

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Via Electronic Mail

February 12, 2009

Charlene M. Frizzera
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 309-G
Hubert Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: **Medicare Program; Changes to the Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) by Certain Provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (74 FR 2873, January 16, 2009). [CMS-1561-NC]**

Dear Acting Administrator Frizzera:

The Muscular Dystrophy Association submits the following comments on the above referenced rule. The Muscular Dystrophy Association ("MDA") is a national voluntary health association committed to funding cure-driven research and comprehensive medical services to Americans affected by more than 40 different neuromuscular diseases. Through our 225 hospital-affiliated MDA clinics, far-reaching service program implemented through more than 200 MDA offices in the U.S., and our unparalleled research program which currently funds more than 330 research projects worldwide, MDA aims to be the source of education, outreach, support, and hope to the estimated one million Americans affected by neuromuscular disease.

The interim final rule implements certain provisions of section 154 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) related to the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) Competitive Acquisition Program. Specifically, this rule: implements certain MIPPA provisions that delay implementation of Round 1 of the program; requires CMS to conduct a second Round 1 competition (the "Round 1 rebid") in 2009; and mandates certain changes for both the Round 1 rebid and subsequent rounds of the program, including a process for providing feedback to suppliers regarding missing financial documentation and requiring contractors to disclose to CMS information regarding subcontracting relationships.

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Issue Impact on the MDA Community:

The Muscular Dystrophy Association appreciates the importance of protecting critical taxpayer resources by reducing Medicare expenditures and implementing programs aimed at eliminating wasteful spending. While we recognize that competitive bidding for standardized, non-customized medical supplies can be an effective means to reduce cost, we implore CMS to carefully weigh the implications such an approach will have on those who are dependent on customized complex mobility equipment (including orthotics).

When applied to complex durable medical equipment, a competitive bidding process that does not factor in the need for customization and skilled provider support will have devastating and costly physical and medical consequences for our community. Individuals with severe neuromuscular disorders require individualized, custom-fit orthotics and mobility equipment. In order to achieve the medical and functional goals of our community – a very small segment of the Medicare beneficiary population – a 'one-size-fits-all' concept of care does not work. To meet the unique and complex mobility needs of persons with neuromuscular diseases, a high degree of customization and a wide variety of technologies must be made available to each individual. For persons with neuromuscular disorders, tailored mobility equipment provides much more than simply a means for mobility. Failure to provide complex mobility equipment that has been properly designed, fitted and customized will have devastating and costly consequences for affected individuals and for the Medicare program Congress recognized this and, in Section 154 of MIPAA (Public Law 110-275), specifically excluded "certain complex rehabilitative power wheelchairs recognized by the Secretary as classified within group 3 or higher (and related accessories when furnished in connection with such wheelchairs)" from the competitive bidding process.

Round 1 – Results from Round 1 as Applied to MDA Community:

- Initial bid winners were not experienced complex rehab equipment providers. Inexperienced providers are not knowledgeable about the products, costs, and services associated with providing complex rehab devices, have no incentive to learn about the importance of customization, and will be unable to fulfill the functional and medical needs of persons with neuromuscular diseases.

- Numerous equipment providers who specialize in complex mobility equipment were excluded from the bidding process and had no recourse or appeal rights.

- Numerous companies won bids to serve beneficiaries in areas in which the company had no proximity, nor any service history.

- Bidders were required to bid on products that are not covered by the Medicare program and products that cannot be billed; these items were included in savings calculations despite the fact that they will not impact Medicare savings.

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Conclusion

While the Muscular Dystrophy Association strongly supports CMS's efforts to delay the implementation of Round 1 of the competitive bidding program to conduct the "Round 1 rebid" aimed at addressing the serious flaws that existed in the original competitive bidding process we implore you to exempt complex mobility equipment for individuals with neuromuscular disorders such as muscular dystrophy, Lou Gehrig's disease, and spinal muscular atrophy from the competitive bidding process.

Thank you for the opportunity to submit these comments. We are available to discuss these issues with you further at your convenience. Please contact MDA's Vice President – Advocacy Annie Kennedy at 202-828-8560 if we can provide further information or other assistance.

Sincerely,

Gerald C. Weinberg
President & CEO

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cc: Annie Kennedy