

May X, 2017

The Honorable Tom Price, MD  
Secretary  
The U.S. Department of Health and Human Services  
200 Independence Avenue, S. W.  
Washington, D. C. 20201

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

Dear Secretary Price and Administrator Verma:

We are writing today to express our deep concerns with the Centers for Medicare and Medicaid Services' (CMS') policies and regulations related to the Durable Medical Equipment (DME) benefit in the Medicare program. Over numerous years, CMS has made significant policy and regulatory changes that have resulted in significant reductions in reimbursement. We are concerned that these reductions may have caused access issues for Medicare beneficiaries and shifted costs to other areas of Medicare.

While we strongly support CMS saving money for the American taxpayers, the agency should not make significant reductions at the expense of beneficiaries and shift cost to institutional and clinical care. We request that you review the current policies related to DME and use your authority as Secretary to make changes to ensure beneficiaries have access to this cost-effective and patient-preferred mode of care. Specifically, we urge you to review and act on the following DME Medicare issues:

**Relief for Non-Competitive Bid Areas**

The Patient Protection and Affordable Care Act (P.L. 111-148) required CMS to establish adjusted fee schedules for DME items in non-competitive bidding areas (CBAs), and also explicitly required CMS to consider the costs of furnishing in these areas. We are concerned that CMS did not fully consider the costs of furnishing in non-CBAs leading to adjusted fee schedule rates that are now as much as 74 percent below unadjusted rates for the same item. Furthermore, CMS only gave suppliers six months to phase-in the new rates, disrupting suppliers' ability to

serve beneficiaries in non-CBAs, and leaving beneficiaries who need equipment and supply items to face a potential crisis in access to DME products and services.

To provide immediate relief from these drastic cuts to DME items in non-CBAs, Congress included a provision (§ 16007(a)) in the 21st Century Cures Act (P.L. 114-255) that extended the reimbursement rates in effect on January 1, 2016 to December 31, 2016. This payment methodology was based on a blended rate of 50 percent fee schedule rates and 50 percent competitive bid rates. Unfortunately, CMS has now released the modified fee schedule with recalculated competitive bid rates resulting in rates at a lower level. Specifically, the rates for oxygen concentrators (E1390) are 8.21% below the January – June 2016 published rates. We urge you to use your authority to extend relief in non-CBAs, and extending these rates until 2019 when a proper calculation of rates that takes into account a number of cost factors indicated in § 16008(a) of the 21st Century Cures Act can take place.

### **Reforms to the Competitive Bidding Program**

Flaws in the competitive bidding program have caused disruptions to suppliers and beneficiaries of DME, including those with diabetes. There is an opportunity to correct some of the flaws before the next round of competitive bidding in 2019 by issuing regulatory changes through the formal rulemaking process. Given our serious concerns with the program as it currently stands, we urge you to use your authority to make the competitive bidding program more efficient and sustainable.

### **Relief for Complex Rehab Technology (CRT) Accessories**

Complex Rehab wheelchairs and related accessories are used by a small population of people with high levels of disabilities such as ALS, cerebral palsy, multiple sclerosis, muscular dystrophy, spinal cord injury, and traumatic brain injury. As a result, Congress exempted CRT from the competitive bidding program in the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008.

In December 2014, CMS issued a “Frequently Asked Questions” document that stated its intent to use competitive bidding pricing information obtained from bids for standard wheelchair accessories to reduce payment amounts for critical CRT wheelchair accessories (such as seat/back cushions, tilt/recline systems, and specialty controls). The payment changes were scheduled to go into effect January 1, 2016, but Congress intervened in December of 2015 (S. 2425) and again in December 2016 with the 21st Century Cures Act (H.R. 34) to delay this payment change for accessories used with Group III power CRT wheelchairs due to concerns about the impact these price adjustments would have on beneficiary access to this specialized, complex equipment. These cuts are now scheduled to take effect on July 1, 2017. We are concerned with CMS’ interpretation that resulted in the cuts, and urge you to use your authority

to stop these dramatic cuts, which may reduce access to CRT accessories for patients who rely on these tools in their day-to-day lives.

### **Additional Oxygen Cuts in Rural Areas**

Last year, CMS applied a budget neutrality “offset” to 2017 rural fee schedules for oxygen concentrators, improperly reducing 2017 concentrator (HCPCS E1390) reimbursement in rural areas below the average regional competitive bidding special payment amounts on which they are based. We have deep concerns about what this may mean for beneficiary access to oxygen and oxygen equipment. We strongly urge you to use your existing authority to reverse the decision to use an outdated regulation to further cut the 2017 rural fee schedules.

As Secretary, you have an opportunity to correct the procedural and substantive deficiencies with the current DME policies and regulations. We respectfully urge you to use your authority to make significant reforms in this area, which will protect beneficiary access to DME items they require.

Thank you for your attention to these important matters, and we look forward to your response. If you have any additional questions, please contact Megan Perez ([megan.perez@mail.house.gov](mailto:megan.perez@mail.house.gov)) with Representative Cathy McMorris Rodgers, Matt Scott with Representative Lee Zeldin ([matthew.scott@mail.house.gov](mailto:matthew.scott@mail.house.gov)), Maddie Bushnell with Representative Loeb sack ([maddie.bushnell@mail.house.gov](mailto:maddie.bushnell@mail.house.gov)), or Polly Webster with Representative Diana DeGette ([polly.webster@mail.house.gov](mailto:polly.webster@mail.house.gov)).

Sincerely,

Cathy McMorris Rodgers  
Member of Congress

Lee Zeldin  
Member of Congress

Dave Loeb sack  
Member of Congress

Diana DeGette  
Member of Congress

Larry Bucshon, M.D.  
Member of Congress

Marsha Blackburn  
Member of Congress