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November 26, 2012

John Rother
President and CEO
National Coalition on Health Care
Suite 690 West
1030 15th Street, NW
Washington, DC 20005

Re: NCHC's Support for Non-Competitive Bidding for Durable Medical Equipment

Dear Mr. Rother:

I am perplexed by NCHC's decision to support expansion of CMS' bidding-style acquisition program for Durable Medical (DME) in the "Curbing Costs, Improving Care" document. I do not question NCHC's support for expanding the CMS program because I oppose cost-saving Medicare reforms. To the contrary, as a former career civil servant who served in the Office of Management and Budget for five Administrations,¹ I successfully championed major reforms to the regulatory process² and continued to do so after I left government.³

Rather, I don't understand NCHC's support for expanding CMS' new DME acquisition program because, to paraphrase what Voltaire said about the Holy Roman Empire, the CMS competitive bidding program is neither competitive nor an auction nor sustainable. On this point, I note the letter signed by 244 distinguished academicians, including several Noble laureates, which stated that the CMS program "is the antithesis of science and contradicts all that is known about proper market design."⁴

The academicians also noted that the program's "complete lack of transparency is inappropriate for a government auction." The letter goes on to state that "As a result of this lack of transparency, it is now clear that the CMS design is not an auction at all but an arbitrary pricing process." NCHC's past support for transparency in the healthcare market⁵ is one reason I find its current support for the DME bidding program to be so surprising.

¹ http://thecre.com/pdf/20_Years_War.pdf

² http://www.thecre.com/pdf/20111211_ALR_Tozzi_Final.pdf

³ <http://thecre.com/pdf/Environmental%20Forum%20v.25%20%20no.4%20-%20Tozzi%20Profile.pdf>

⁴ <http://www.cramton.umd.edu/papers2010-2014/further-comments-of-concerned-auction-experts-on-medicare-bidding.pdf>

⁵ <http://nchc.org/content/congressional-hearing-hosts-supporters-health-cost-transparency-0>

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With respect to my statement that the DME program is not competitive, I note a study performed by researchers at CalTech and published in the *Quarterly Journal of Economics* which concluded that “The CMS auction fails to generate competitive prices of goods and fails to satisfy demand.”⁶

Given your Congressional service, including serving as Staff Director and Chief Counsel for the U.S. Senate Special Committee on Aging, I’m sure you recognize that the Congressional Budget Office is a crucial, non-partisan source of expert analysis of federal programs. Thus, NCHC’s support for expanding the Medicare bidding program needs to be seen in light of the statement by CBO’s Chief of Medicare Cost Estimates who, at a conference co-sponsored by the University of Maryland and the National Science Foundation, opined that if CMS doesn’t

*change the mechanism they use, I think there is a high probability of failure in the near future. There is near certainty of failure sometime down the road.*⁷

The reason I write is to inquire, why is NCHC supporting expansion of a DME acquisition program that, according to virtually every independent expert who has analyzed it, does not produce competitive results, is not transparent, and faces “a near certainty of failure”?

I will be posting this letter on the Center for Regulatory Effectiveness’ Competitive Bidding Interactive Public Docket found at <http://www.thecre.com/blog/>.

We will also publish your response, verbatim, in the same location.

For more information about CRE, please see http://www.thecre.com/oira/?page_id=8.

Sincerely,



Jim Tozzi
Member, Board of Advisors

⁶ http://www.thecre.com/blog/wp-content/uploads/2012/06/The_CMS_Auction.QuarterlyJournalofEconomics.May2012.pdf

⁷ <http://www.cramton.umd.edu/papers2010-2014/medicare-auction-conference-final-panel-562.rtf>, p. 8.