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Glenn M. Hackbarth, J.D., Chairman
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March 17, 2009

Charlene Frizzera, Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Blvd.
Baltimore, MD 21244-1850

Re: File code CMS-1561-IFC

Dear Ms. Frizzera:

The Medicare Payment Advisory Commission (MedPAC) welcomes the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS's) interim final rule entitled *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)*. We appreciate your staff's work on this program, particularly given the competing demands on the agency.

Competitive bidding for DMEPOS appears to be a promising way to improve the accuracy of Medicare's payments for these services. The 1999–2002 DME competitive bidding demonstration established by the Balanced Budget Act of 1997 showed competitive bidding resulted in prices lower than the fee schedule by 17 to 22 percent, without compromising quality or access. Round one of the current competitive bidding program—established by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) and delayed by MIPPA—resulted in winning bids that were lower than the fee schedule by an average of 26 percent. These results suggest that the DME fee schedule rates paid by Medicare are likely too high and that competition appears to be an effective way to lower them. Given the potential to reduce Medicare spending by setting payments at competitively determined rates, we reiterate our support for the DME competitive bidding program and urge CMS to expeditiously implement the program as revised by MIPPA.

At the same time, we are aware of the stakeholder concerns about the program that prompted the Congress, via MIPPA, to direct CMS to make changes to it. Changes made by CMS—such as the requirements for the accreditation and identification of subcontractors and OIG verification of process, pivotal bid amounts and single payment amounts—should increase confidence in the

competitive bidding process. CMS should also ensure that other implementations issues, such as data acceptance and processing, have been corrected as well.

In addition, CMS should explore how some of the lessons from the previous round of competition might be incorporated in subsequent rounds. For example:

- A *de minimus* policy might be considered that would allow all bidders within a narrow range of the winning bid to be awarded contracts to prevent suppliers that bid just over the winning bid from being eliminated.
- CMS could simplify bidding for the many items that have very little weight in the bid and are rarely requested. Suppliers could bid explicitly for the important items in a category and an aggregate discount from fee schedule rates could be computed from those bids. For the other items in the category, suppliers could be deemed to bid the same percentage discount from the fee schedule as was bid on the important items.

The Commission supports the concept of competitive bidding for DMEPOS and CMS moving ahead expeditiously with the program. Given the potential of the program to improve the accuracy of Medicare's payments for DME, learning from prior experience and building on it is essential for competitive bidding going forward.

MedPAC appreciates the opportunity to comment on the rule. The Commission also values the ongoing cooperation and collaboration between CMS and MedPAC staff on technical policy issues. We look forward to continuing this productive relationship.

If you have any questions or require clarification of our comments, please feel free to contact Mark Miller, MedPAC's Executive Director, at 202-220-3700.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn M. Hackbarth".

Glenn M. Hackbarth, J.D.
Chairman