



**Comments for the Record
From the
Jersey Association of Medical Equipment Services (JAMES)
On behalf of its Members**

**In Support of Hearing by the House Ways and Means Sub-Committee on Health
Held
Wednesday, May 9, 2012 at 9:00 am**

Summary Statement

Chairman Herger, Ranking Member Stark, members of the Committee, the Jersey Association of Medical Equipment Services (JAMES) submits the following comments for the record regarding the hearing by your subcommittee on the flawed competitive bidding program for durable medical equipment, prosthetics, orthotics, and suppliers (DMEPOS). We are a trade association representing and supporting the durable medical equipment (DME) supplier community of New Jersey.

Our membership has raised serious concerns with the program for several years with our legislators, and has solicited their support as co-sponsors on legislation that would repeal the flawed bidding program. H.R. 1041, the Fairness in Medicare Bidding Act (FIMBA) has the support of six New Jersey House members.

New Jersey is significantly impacted by the competitive bidding program, as we have 17 out of 21 counties divided up amongst the four competitive bid area's (CBA's) that encompass the state. Two of the four CBA's cross state lines and force New Jersey DMEPOS suppliers to commit to doing business in Pennsylvania, Delaware and Maryland, if they are awarded a contract.

One of the most critical issues with competitive bidding is the apathetic lack of understanding of how the DME industry connects with other healthcare providers and functions. The DME supplier community is made up of providers who serve a local service area, sometimes as small as a few miles in any area. The bidding process of requiring a bid winner to serve the entire CBA is in itself exclusionary. An accredited provider serving the southern part of New Jersey would find it physically impossible to serve the portion of Maryland included in the CBA in a timely manner. Expecting that same supplier to subcontract in order to stay in business would require business expertise far beyond the abilities of most small businesses.

The first real challenges our members faced with the competitive bidding program occurred last August when the Centers for Medicare & Medicaid Services (CMS) announced the Round 2 specific zip codes and product categories. Suppliers located in the southern portion of

the state received confirmation that if they wanted to submit a bid to potentially continue to service their share of New Jersey's 1.4 million Medicare beneficiaries, they would need to plan to expand their operations to service areas in Pennsylvania, Delaware and Maryland. Their first commitment to this potential expansion was one that posed significant regulatory burden as they prepared their businesses for interstate commerce in a healthcare-related industry. The web of state regulations for DME suppliers varied by state; numerous licensing boards and regulatory agencies gave conflicting information, and the licensing resource provided by CMS was one that changed frequently without notice to DME suppliers. Complex out-of-state license application requirements and processing timeframes led JAMES to request relief from our legislators, and ultimately, CMS acknowledged challenges existed related to regulatory licensure requirements and granted a licensure delay.

Similar barriers to access did not apply to DME companies outside of New Jersey, as our licensing requirements are minimal. The program, as currently designed, allows a DME supplier to bid to service a CBA without the need for a physical presence in the CBA. It is possible, based on the results the industry saw from Round 1, that many New Jersey DME companies were not only submitting bids to compete against established companies in their current marketplace, but also unknown out-of-state DME suppliers. Our association office fielded many calls from DME suppliers throughout the country inquiring about the restrictive nature of the regulations enacted by our State Board of Respiratory Care. These companies were ultimately working to devise a plan to circumvent the true intent of our regulations by utilizing minimal efforts to show compliance, if awarded a contract for oxygen and CPAP product categories. Considering our regulations set forth by the State Board of Respiratory Care are based on patient safety, this has raised significant concerns for our members.

While attending a recent legislative event in the state, our association's representative had the opportunity to speak with many New Jersey small business owners. It is apparent that our small business base is still struggling to overcome the economic challenges of past years, and the competitive bidding program, as currently designed will provide additional challenges. A study conducted on potential supplier closure and job loss in the CBA's that impact New Jersey reveal there is a potential for the loss of 1,483 suppliers and 14, 831 jobs.¹ Medicare beneficiaries will experience access delays due to the magnitude of the dismantling of the New Jersey DME industry.

Unsustainable reimbursement rates, based on Round 1 outcomes, will further plague the DME suppliers who are successful at winning contracts. A recent study released discusses how lower medical equipment reimbursements have lead to the quality of such products degrading to the point where the patient is impacted by lesser-quality devices. While we are supportive of fiscal responsibility to protect the longevity of the Medicare program, we believe there are alternative ways to reflect updated pricing structures that will produce cost-savings for the Medicare program. It should be noted that CMS has ample authority to adjust prices to meet market demands without implementing such a devastating program. The concept of this misguided program came about because the creators did not understand the DME industry and how the network of over 100,000 suppliers has been woven into the fabric of healthcare in virtually every community. The businesses, small and large, live and work in neighborhoods where it is literally, "neighbors serving neighbors". It is not possible to move away from that

¹ The VGM Group. DME Competitive Bidding Will Cost More Than 100,000 Jobs. Informational brochure, 2010.

concept without harming everyone involved, including the patient, the physician, and every other component of healthcare that touches that patient.

Recent announcements by the Department of Health and Human Services regarding the finalization of the Community First Choice rule indicate the agency is committed to keeping patients in their home environment – a true cost-savings measure. We applaud this initiative, but at the same time exercise caution as we are concerned that the competitive bidding program will eliminate the very infrastructure needed to support the Community First Choice option.

As New Jersey DME suppliers await the remainder of events in the Round 2 competitive bidding timeline, our association is very concerned about competitive bidding and will work with our members of Congress to help meet the stated goals for this program following repeal. JAMES can offer alternatives that will both reduce fraud and abuse, and reduce program costs by applying realistic solutions.

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