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**Bruce Yarwood**  
PRESIDENT & CEO

May 20, 2008

The Honorable Fortney "Pete" Stark  
Chairman  
Subcommittee on Health  
Committee on Ways and Means  
U.S. House of Representatives  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Dave Camp  
Ranking Member  
Subcommittee on Health  
Committee on Ways and Means  
U.S. House of Representatives  
1139E Longworth House Office Building  
Washington, DC 20515

Re: Statement for the Record of the Subcommittee on Health Hearing on the Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program, held on May 6, 2008

Dear Mr. Chairman and Mr. Ranking Member:

On behalf of the American Health Care Association (AHCA), a professional organization representing nearly 11,000 non-profit and proprietary nursing facilities, subacute centers and homes for persons with mental retardation and developmental disabilities, caring for more than 1.5 million of our nation's frail, elderly, and people with disabilities, please accept the following for inclusion in the hearing record specified above.

AHCA applauds your leadership in holding the recent hearing that examined the status of the Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program. Although we submitted comments on the proposed rule, 71 Fed. Reg. 25654 (May 1, 2006), in conjunction with the Alliance for Quality Nursing Home Care, many of the concerns articulated still have not been addressed by the Centers for Medicare and Medicaid Services (CMS).

First, AHCA had asked that the rule be revised to expressly exempt products that are furnished by or under arrangement with long term care facilities until the competitive bidding process for all DMEPOS is implemented on a nationwide basis. An exemption would have ensured no disruptions or variations in the quality of supplies and suppliers serving Medicare beneficiaries in long term care facilities who may reside within a selected Metropolitan Statistical Area (MSA) versus those residing nearby in a similar setting, but within another MSA.

However, since the Final Rule did not exempt Skilled Nursing Facilities (SNFs) from the DMEPOS Competitive Bidding Program, AHCA now asks that SNFs who had been their own suppliers, and who had submitted a bid which was not selected as a winner by CMS,

still be able to continue to provide DMEPOS to their own residents at the winning bid. Similarly, we also request that a DMEPOS supplier affiliated with SNFs as a related party corporation, through common ownership and/or control either on an individual basis or as a certified chain, be allowed to provide services just to residents of the affiliated facilities at the winning bid price. Such action would assure continuity for SNF residents and sustain access to quality products and suppliers.

In fact, under current statute and regulation, CMS already permits certain health care providers to furnish some DMEPOS items to their patients, specifically physicians, clinical nurse specialists, nurse practitioners, occupational therapists and physical therapists in private practice, and physician assistants. Certain types of DMEPOS that would otherwise be competitively bid may be supplied by these providers to their own patients at the single payment amount established for the item of DMEPOS in the Competitive Bidding Area (CBA). Why should SNFs not be granted with the same opportunity?

Second, AHCA is concerned with the huge reduction in the number of suppliers since the implementation of the program. Having a precipitous drop in the sheer numbers of suppliers over a short time frame again raises the issues of access and quality of those remaining. The few suppliers left most likely will be stretched beyond their capacities, resulting in reductions in access and quality. At a time when nursing facilities are working to improve quality of care, excluding suppliers that meet the quality and accreditation standards is counterproductive.

Third, in regard to the accreditation process, while AHCA supports the concept, our members found the process to be confusing and inefficient. Their negative experiences will serve to discourage future applicants. Therefore, it is imperative that CMS improve the instructions accompanying the accreditation application as well as expand educational efforts targeted at applicants. In addition, we are concerned that applying the accreditation standards to the home office of a SNF company makes no sense. Such a requirement is purely time consuming and wasteful.

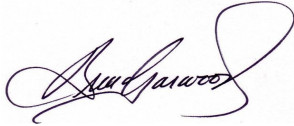
Fourth, AHCA would like to reiterate that CMS must take swift action to rectify the following bidding implementation issues raised within the testimony presented by Mr. Thomas Ryan on behalf of the American Association for Homecare:

- The bid submission system technology was inadequate to meet the needs of suppliers wishing to bid. The existing system although it required excessive amounts of time to input the data, often lost the data or was otherwise inoperable and inaccessible. As a result, some applicants were unable to submit their bids and thereby precluded from participating.
- Documentation properly submitted in a timely fashion by suppliers was inexplicably omitted or ignored by the Competitive Bidding Implementation Contractor (CBIC), resulting in the unwarranted rejection of qualified bids.
- The CBIC disqualified many bids for financial instability, however, at no time was an explanation of what determined the stability of a bidder provided.
- The self-reporting process by which how many winning suppliers were needed for each market was opaque.

- Little to no information was released regarding the calculation of the winning bid amounts.
- There is no opportunity for administrative review for disqualified bids.

Thank you for the opportunity to share our thoughts on this important issue. Please let me know how else AHCA may be helpful to you or your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Yarwood", written in a cursive style.

Bruce Yarwood  
President & CEO  
American Health Care Association