



**House Committee on Small Business  
Subcommittee on Investigations and Oversight**

**“Competitive Bidding for Durable Medical Equipment:  
Will Small Suppliers Be Able to Compete?”**

**Wednesday, October 31, 2007**

**Testimony of Ms. Georgetta Blackburn,  
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Good afternoon, Mr. Chairman and distinguished members of the subcommittee. My name is Georgie Blackburn and I am pleased to be here today on behalf of the American Association for Homecare where I serve on its board of directors and executive committee.

I am very delighted that the subcommittee has called for this important hearing aimed at examining the Medicare competitive bidding program and its impact on patients and small providers who provide homecare equipment and services to millions of Americans.

The American Association for Homecare is the national association representing the interests of home medical equipment providers. AAHomecare members include a cross-section of manufacturers and providers that make or furnish durable medical equipment, prosthetics, orthotics and medical supplies to Medicare beneficiaries in their homes. Our members are proud to be part of the continuum of care that assures that Medicare beneficiaries receive cost-effective, safe, and reliable homecare products and services in their homes.

I am also Vice President of Government Relations and Legislative Affairs for Blackburn's—a home medical equipment company based in the Pittsburgh metropolitan area. Blackburn's has been in business for more than 70 years and has 150 employees serving eastern Ohio, western Pennsylvania, northwestern West Virginia and western New York. My homecare company offers products and services specifically tailored to each patient encompassing all levels of medical equipment, pharmacy, respiratory therapy, support surfaces, power mobility, specialty products, bariatric equipment and medical supplies.

### **Who Requires Homecare?**

We are very concerned with the impact competitive bidding will have not only on the small provider community but on the ability of providers to meet the needs of their patients. Let me describe some of the people who receive homecare services from members of the American Association for Homecare.

The typical Medicare home oxygen beneficiary is a woman in her seventies who suffers from late-stage chronic obstructive pulmonary disease (COPD) with severe low levels of oxygen in her blood. COPD is the only leading cause of death for which both prevalence and mortality are rising. COPD is a chronic, debilitating disease characterized by severe airflow limitation resulting from chronic inflammation of the airways and a decrease in functional lung tissue.

Medicare beneficiaries who use a power wheelchair are seniors and Americans with disabilities that have life-long debilitating conditions such as multiple sclerosis, Lou Gehrig's disease, cerebral palsy, traumatic brain injuries and

spinal cord injuries. Power mobility devices help these individuals live at home with independence rather than in an institutional setting.

This program will impact our parents, our grandparents and other Americans who are eligible for the Medicare program. It is with these thoughts in mind that we believe a careful and methodical approach must be taken so we do not undermine the standard of care that patients have come to expect from their homecare providers.

### **Impact on Home Medical Equipment Suppliers**

Blackburn's has had a very difficult but not unique experience with the new competitive bidding program. We reside in one of the 10 initial areas where competitive bidding is being implemented. My company has struggled to submit a bid on all nine of the product categories subject to bidding in the Pittsburgh area. The bid system was extremely complex and confusing, which can be illustrated by the extensive time it took Blackburn's to submit our bids and the lack of participation from the provider community. We also received conflicting guidance from Medicare and its contractors. And even though we worked diligently to determine the costs of providing services to our patients, due to the service component inherent with the care we provide, our bids can only be deemed a guesstimate beyond our costs.

And the risks to providers cannot be overstated. If we are not selected as a contracted provider, the survival of our company will be in jeopardy. The jobs we sustain will be dramatically cut back or lost entirely and the Medicare patients that rely on our equipment and services will be forced to find another provider.

It is important to note that Medicare providers operate in a competitive environment already. Providers not only try to negotiate the best price of the equipment from manufacturers but they also compete on the basis of quality and service. Small businesses must compete primarily on quality of service since they do not have the market size to negotiate on prices from manufacturers.

This competitive bidding system will stifle competition over the long term because the government is going to make a determination of what the demand for services is, and then, rather than let the marketplace determine how many providers are necessary to support that demand, the government is going to make that decision for us.

Small homecare providers are not only the backbone of the American Association for Homecare, representing more than 80 percent of our membership, but small homecare providers are a crucial component of our nation's healthcare infrastructure. They provide home medical equipment in every area of the country.

In southern California, Medicare homecare providers have worked tirelessly to serve the healthcare needs of many Americans who were under threat from the recent fires. Homecare providers prepare and respond to emergencies throughout the country whether it is an ice storm, hurricane or the threat of a devastating pandemic flu. In California, homecare providers reached out to their patients, evacuation centers and their referral sources to ensure that they had the necessary medical equipment and services such as oxygen and ventilators needed for survival. If there is not an adequate supply of providers, patients will be harmed when they are at their most vulnerable.

And HME providers not only do this during national emergencies and crises but on an everyday basis where our work goes relatively unnoticed. We help people remain in their homes with family rather than in a hospital or other institutional setting. Health and Human Services Secretary Michael Leavitt has called for greater use of home and community-based care in Medicaid because “it’s not only where people want to be served, but it’s radically more efficient.” We believe the same principle holds true for Medicare.

We need to protect this valuable benefit, which is now threatened by competitive bidding.

## **Goals**

The Association's primary goal is to ensure Medicare beneficiaries have appropriate access to home medical equipment that meets their medical needs.

The Association also believes that patients should have a choice in choosing who provides them with their healthcare services and equipment. Since Medicare was first created, beneficiaries have been able to choose their healthcare provider. This is about to change because of this program.

Under the Medicare competitive bidding program, providers must submit bids to CMS in a competition to provide items and services to Medicare beneficiaries at a reduced reimbursement rate. Providers who meet Medicare participation requirements and whose bids are deemed low enough by the government will be selected to provide competitively bid DMEPOS items and services to Medicare beneficiaries.

Those who are not selected as winning bidders, as a general rule, will not be able to provide competitively bid services to Medicare beneficiaries. Since Medicare typically makes up between 35-50 percent of a small homecare provider’s practice, losing the ability to provide competitively bid items for the three-year contract period is essentially a death knell to these providers.

The competitive bidding rules designed by the Centers for Medicare and Medicaid Services (CMS) are stacked against the small provider. Smaller DME providers lack the economies of scale to negotiate lower prices or the physical size to cover an entire metropolitan statistical area (MSA).

Even with the small business protections included as part of the program such as the ability to form networks or the 30 percent set-aside for small businesses, the program will still radically reduce the number of providers that exist today. In the long-run, this will lead to less competition in this sector, not more. It is entirely possible that based on the government's criteria, a competitively bid area could be serviced by only eight providers—five large companies and three small businesses. And it is entirely possible there could be less than eight for a specific product class.

Moreover, there is concern that if the private sector adopts Medicare payment policies as their own, it is possible that private payors will allow only those providers, who accept a winning bid, to continue to provide services under private plans. If this happens, no small provider who did not win a bid will be able to remain in business. The government will have accidentally eliminated any competition for future rounds of competitive bidding.

Greater protection, more fairness, and a greater willingness to expect the unexpected is necessary for small providers so that we do not dismantle this segment of the healthcare infrastructure because once the damage is done, it will be extremely difficult, if not impossible, to correct.

### **Recommendations**

The Association has advocated for a date-certain deadline to be announced by CMS at which time all providers would be required to be accredited. This would help ensure quality and reduce opportunities for fraud and abuse.

We have pressed CMS to implement more stringent quality standards than the ones initially developed and implemented by CMS. Adherence to these standards should be a condition of Medicare participation enforced through accreditation in order to ensure a high level of care.

Both these recommendations have not been fully addressed by CMS.

Finally, the Association supports modest changes to the program contained in H.R. 1845, the Durable Medical Equipment Access Act of 2007, introduced by Representatives John Tanner and David Hobson. This bill will take necessary steps to protect both patients, who require home medical equipment and the Medicare providers of these items and services. And it has strong bipartisan support with more than 130 members of Congress.

This bill does not repeal the competitive bidding process for durable medical equipment (DME). Rather, it makes sensible changes to its structure in order to ensure beneficiaries have access to home medical equipment; it protects small providers of quality DME items, therapies, and services; and it fosters a dynamic marketplace for Medicare-reimbursed DME that can be sustained over time.

Specifically, H.R. 1845 would:

1. **Exempt smaller, rural areas from being subjected to competitive bidding.**

The United States Congress specifically gave CMS the authority to exempt rural areas and urban areas with low population from competitive bidding for a reason. It is important to ensure that competitive bidding is not implemented in areas that lack the number of providers to support it.

2. **Allow all providers who meet Medicare participation standards and who have submitted a bid to continue to provide competitively bid items and services at the bid rate established by CMS.**

This provision would ensure that beneficiaries have access to a choice of providers and would foster an environment where providers work to enhance services in order to gain market share.

Under the current design, there is no incentive to maintain and improve services once a provider wins a bid. Moreover, there will be cases where beneficiaries with several homecare needs may be forced to go to multiple providers. It is entirely possible that a patient on oxygen therapy, who requires a power wheelchair and a hospital bed, may be required to go to three separate providers for his or her homecare needs.

The program, as designed, also will force hospital discharge planners to order multiple products for one patient from multiple providers. Patients will be serviced by multiple providers and will receive co-payment billings from various sources rather than just one, complicating matters for many elderly.

Competitive bidding should not create barriers or hardships for patients who are prescribed covered Medicare items and services.

3. **Restore the rights of participating providers to administrative and judicial review.**

The process for submitting a bid in round one was extremely complex, confusing and fraught with problems. Most providers are unsure if their bid was completed correctly. The review of submitted bids by CMS and its contractors is also likely to be prone to human error.

Right now, providers have no recourse if a mistake is made in calculating the contract award reimbursement rate or in awarding a contract. An error can result in the loss of a bid. Restoring due process rights for providers will ensure a higher level of confidence in the program while providing a reasonable mechanism for those businesses that made an unintentional mistake or whose bid was incorrectly handled to address the mistake.

4. **Exempt items and services unless savings of at least 10 percent can be demonstrated.**

CMS should be required to show that competitive bidding saves both the taxpayer and the government money while, at the same time, not arbitrarily reducing the number of providers eligible to furnish homecare items and services. Without a specific savings target, applying competitive bidding to those items and services where significant savings cannot be achieved may lead to a program that is more costly to administer than its primary goals of reducing payments, increasing quality and limiting the number of providers in the marketplace.

## **Conclusion**

Homecare providers across the country are working to provide high quality items and services to Medicare and other patients. Yet the risks posed by the current design of the Medicare competitive bidding program, particularly to small providers, has the potential to vastly undermine the standard of care, quality of care, choice of provider and access to items and services that beneficiaries need.

We look forward to working with this Committee and its staff to address small business concerns raised by the Medicare competitive bidding program. We also hope to work with Committee members to address provisions outlined in H.R. 1845.

Thank you for the opportunity to testify today.