

TESTIMONY OF ALAN S. ROUTMAN, M.D.

ON BEHALF OF

THE AMERICAN ASSOCIATION OF ORTHOPAEDIC SURGEONS

ON

**The Impact of Competitive Bidding on Small Businesses in the Durable Medical
Equipment Community**

**BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS**

Subcommittee on Rural Development, Entrepreneurship and Trade

February 11, 2009

**Testimony of
Alan S. Routman, M.D.**

**On Behalf of
The American Association of Orthopaedic Surgeons**

On

**The Impact of Competitive Bidding on Small Businesses in the Durable Medical Equipment
Community**

Before the Subcommittee on Rural Development, Entrepreneurship and Trade

February 11, 2009

Good afternoon Chair Schuler, Ranking Member Luetkemeyer, and members of the Subcommittee. I am Dr. Alan Routman, a fellow of the American Academy of Orthopaedic Surgeons and Vice Chairman of the Board of Managers of the Physicians Outpatient Surgery Center in Fort Lauderdale, Florida. I am here on behalf of the American Association of Orthopaedic Surgeons (AAOS), which represents more than 17,000 board-certified orthopaedic surgeons.

I would like to thank you for the opportunity to present our concerns regarding the many changes being implemented by law and regulation concerning durable medical equipment, prosthetics, orthotics and supplies- collectively referred to as DMEPOS. We share Congress' aims of increasing the quality of patient care, eliminating fraud and abuse in federal health care programs, and reducing the costs of delivering care to beneficiaries, and it is our pleasure to appear before you today to continue our work toward those goals.

With that said, I would like to highlight, what we believe to be the unintended consequences of applying rules meant for retail DMEPOS suppliers to physicians in small practices across the country who provide certain DMEPOS as part of providing high quality care to their patients. It is important to note that we are talking about physicians who supply DMEPOS *only to their patients*, not to the general public. And because many of our physicians who provide DMEPOS to their patients are essentially small businesses and many provide those items to their patients because they are the only “supplier” in rural areas, we are especially appreciative of your willingness to discuss this issue today.

* * *

In the field of orthopaedic surgery, we have several sub-specialties that are especially reliant on the provision of DMEPOS to meet basic patient care needs such as foot and ankle surgeons and sports medicine. As you well know, the provision of DMEPOS is not the main facet of the care we provide to patients, but it is a critical part of ensuring that many patients are able to ambulate out of our offices as safely as possible.

When analyzing the impact of the new rules and regulations around DMEPOS, it’s important to remember that, from the physician perspective, there are different rules that apply to the different categories of DMEPOS.

- (1) Durable Medical Equipment- As you are probably aware, physicians are not allowed to supply most DME to patients because of the Stark self-referral regulations. However, because some DME is so important to a patient's ability to safely leave the physician's office- and so important for preventing further injury, an exception from the Stark prohibition was created for several items. In the area of orthopaedic surgery, this exception includes crutches, canes, walkers, and folding manual wheelchairs. Physicians are able to provide these items to their patients if the arrangement fits within the Stark in-office ancillary exception.
- (2) Orthotics- The provision of orthotics to patients in the course of care is also incredibly important. According to the U.S. Code, the definition of orthotics includes "leg, arm, back, and neck braces and artificial legs, arms, and eyes." Orthotics are treated differently under regulation than DME in that there is not an outright prohibition on physician provision of orthotics. In order to provide patients with orthotics and submit a claim to Medicare, physicians are required to ensure that they fit the arrangement into the Stark in-office ancillary exception.
- (3) Prosthetics- The final major category is prosthetics, defined in the U.S. Code as items that "replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care)." While the provision of items meeting this definition is important to other specialties, the current rules have not substantially impacted the care that orthopaedic

surgeons provide to their patients. In addition, Congress did not authorize CMS to include prosthetics as part of the competitive bidding program.

With that groundwork laid, I'd like to take you through some of the concerns that we have regarding new and revised rules pertaining to the provision of DMEPOS to our patients. While I know that our focus here today is the competitive bidding program, I'd like to give you the full picture of how the provision of DMEPOS to our patients is becoming increasingly difficult. Specifically, I would like to address the quality standard *accreditation* process for physician-suppliers.

CMS has signaled that it might implement an unnecessary requirement that physicians be accredited in order to provide DMEPOS to their patients. This threatens to interfere with the continuity of patient care and the primacy of the patient-physician relationship, increase the administrative burden of participating in the Medicare DMEPOS program, and exacerbate the financial stress of many physician practices delivering care to Medicare patients.

DMEPOS QUALITY STANDARDS & PHYSICIAN-SUPPLIERS

In order for a physician to be able to provide allowed DMEPOS to their patients and bill Medicare for those products, the physician must not only be enrolled to participate in Medicare as a physician- but must also enroll as a DMEPOS “supplier.” The rules make

no differentiation between large retail DMEPOS suppliers and physicians who are also serving as DMEPOS suppliers solely during the course of caring for their patient.

I would personally like to thank the members of this subcommittee for addressing this issue in the last Congress. In May 2008, you held a hearing, at which the AAOS testified, looking into the flaws of the DMEPOS competitive bidding program and accreditation requirements. I'd like to thank Committee Chair Velazquez, Chair Schuler, and everyone else who attended that hearing for bringing focus to the impact of these requirements on patients and small practices- all resulting in several changes made to the program when Congress passed the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA).

Specifically, MIPPA Section 154(b) expands the Secretary's authority to address these patient access concerns and has the potential to assure greater access to high quality and necessary DMEPOS at the point of care. MIPPA Section 154(b) amends 42 U.S.C.

1395(m)(a)(20)(E) by adding the following provisions:

(ii) in applying such standards and the accreditation requirement . . . with respect to eligible professionals (as defined in section 1848(k)(3)(B)), and including such other persons, such as orthotists and prosthetists, as specific by the Secretary, furnishing such items and services-

(I) such standards and accreditation requirement ***shall not apply*** to such professionals and persons ***unless*** the Secretary determines that the standards being applied are designed specifically to be applied to such professionals and persons; and

(II) the Secretary *may exempt* such professionals and persons from such standards and requirement *if* the Secretary determines that licensing, accreditation, or other mandatory quality requirements apply to such professionals and persons with respect to the furnishing of such items and services.

In response to this Congressional directive, in September 2008, CMS exempted physicians from the DMEPOS accreditation deadlines. However, in several subsequent communications, CMS has signaled its intention to subject physicians to these requirements in the future. It is our strong belief that the Secretary of HHS should exercise the authority granted in MIPPA to exempt physicians and licensed health care professionals from the quality standards and accreditation requirement considering the licensing, accreditation, and other quality requirements that physicians and licensed health professionals must meet.

THE QUALITY STANDARD ACCREDITATION PROCESS

As I mentioned, we are concerned that CMS is indicating that physicians will still require accreditation for physicians to be DMEPOS suppliers. We acknowledge and share Congressional and CMS interest in ensuring Medicare beneficiaries receive high quality care, supplies, and service. However, we are equally committed to ensuring that patients have access to the care and supplies that they need in a safe, efficient, and timely manner. Unfortunately, our members are finding it increasingly difficult to deliver DMEPOS to our Medicare patients.

The provision of these items is limited by law and the type of medicine that orthopaedic surgeons practice. Therefore, in most cases orthopaedic surgeons are submitting claims for a very small number of DMEPOS items. However, in order to go through the accreditation process, physician practices will be charged approximately \$3,000 *per location* to be accredited as having met the Quality Standards. This only makes it increasingly difficult for physicians to participate, especially in the context of unpredictable payment for physician services and rising costs of providing care. We have spoken to some small practices that provide so little in terms of DMEPOS that total Medicare claims for the year are only \$1,500- yet for those patients who need these items, it is a critical service. I suspect for some practices, that number is even lower. Ultimately, this process will result in a net loss for many physician practices, many in rural areas, across the country.

We believe that this requirement is duplicative of other training that health care professionals, particularly orthopaedic surgeons, receive and that these new requirements are financially and administratively burdensome. This will undoubtedly result in many physicians no longer providing these services to their patients which would adversely impact patient care.

I'd like to share with you the personal experiences that I have gone through trying to ensure that I can get my Medicare patients the care that they need and deserve. Over the

course of the last year, I have been jumping hurdle after hurdle, attempting to get my DMEPOS supplier number, so that I can submit claims for the DMEPOS that I deliver to my patients.

In submitting my paperwork to the Medicare contractor assigned to Florida to receive my DMEPOS enrollment number, I was repeatedly denied because I, as a physician, have not been accredited as being qualified to provide items like crutches and splints to my patients- even after decades of medical training and practice. CMS even continued to deny me a DMEPOS enrollment number *after CMS exempted physicians from the most recent DMEPOS accreditation deadlines.*

Because of this, I have not been reimbursed by Medicare for DMEPOS for the last 12 months, which has resulted in several thousand dollars of unpaid claims- which – as you know- for a small business and solo practitioner is a tremendous amount. During this time, I have continued to provide Medicare patients with the DMEPOS products, because they need it, and because I have hope, heightened from the attention that you brought to this issue last year, that I will eventually be compensated for the reasonable and necessary care that I have delivered.

Recommendation

I'd like to leave you with a recommendation regarding physician provision of DMEPOS in the Medicare program which will ensure patient access to necessary items while

maintaining the integrity of the program, which I know is a goal shared by all of the stakeholders you've heard from today.

We'd seek your support in recognizing that physicians are already trained to provide and administer DMEPOS to patients. The AAOS continues to work with CMS to assure quality in the Medicare program. We firmly believe that, given the complexity of today's health care environment, steps must be taken to ensure that there are not unnecessary or duplicative efforts required of program participants that would discourage patient access to care. In terms of providing public confidence that the providers and suppliers of DMEPOS are trained and qualified, we believe that professional society credentialing and training processes and state regulation of practitioners already provide many of the necessary safeguards in this area.

While we understand the need for a process of this nature for commercial suppliers, **we ask *not* that physicians and health care professionals be exempted from having to be accredited, but rather- that they be deemed as having met the requirements of accreditation once they are licensed or credentialed to practice medicine under state law.**

SUMMARY

The quality and accreditation requirements applicable to physicians and health professionals should balance the costs of compliance against the affected physician-

suppliers' potential for covering these costs. If physicians cannot cover the costs of DMEPOS participation, we run the risk of discouraging participation by small physician practices and reducing patient access to items essential to quality medical care. The ability of a physician to address a patient's condition *during* the physician-patient visit and to ensure that the patient has received the appropriate DMEPOS with proper instruction on its use and application is integral to the quality and efficiency of patient care. However, to require a patient to go elsewhere to receive products that could otherwise have been delivered in their physician's office may lead to disjointed care without the input or expertise of the treating physician.

I would like to thank you, Chairman Shuler, ranking member Luetkemeyer, and members of the Subcommittee for the opportunity to speak to you this afternoon, and I am happy to answer any questions that you might have.