

Congress of the United States
Washington, DC 20515

June 20, 2013

Daniel R. Levinson
Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

Dear Inspector General Levinson:

We are writing to request that the Office of the Inspector General (OIG) investigate issues surrounding the Centers for Medicare and Medicaid Services' (CMS) intentions to move forward with Round 2 of the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program, despite indication that CMS has awarded contracts to suppliers in several bidding areas that have not been compliant with the program guidelines.

Furthermore, the facts surrounding the implementation of Round 2 have national implications, raising several questions with regard to the fact that the Competitive Bidding Program guidelines are being ignored. It is our fear that the program has been moved forward in a manner outside of the established guidelines, for the purpose of achieving a budgetary outcome that is incongruent to the real market value of items or services in a given competitive bidding area.

We have included a copy of a letter dated June 12, 2013, from 227 members of the House of Representatives to CMS Administrator Marilyn Tavenner, requesting an administrative delay for Round 2 of the DMEPOS Competitive Bidding Program due to several irregularities with regard to contract winners not having the appropriate licensure and accreditation, despite *42 CFR Ch. IV (c) (10-1-11 Edition) Quality Standards and Accreditation*, that indicates suppliers must have all state and local licenses required to perform the services identified in the request for bids. Per the guidelines established, any bidder who is not listed as being accredited for that specific category should have been removed from the process.

Unfortunately, CMS did not appropriately vet 30 suppliers in Tennessee, which led to awards for suppliers that did not hold appropriate licensure, as admitted by CMS in the additional enclosed letter, CMS to The Honorable Phil Roe from Administrator Marilyn Tavenner, dated June 14, 2013. Within the response to Congressman Roe, Administrator Tavenner suggests that CMS will take steps to void 30 of the 98 contracts for suppliers in the Tennessee competitive bidding areas.

Administrator Tavenner expresses confidence in the ability for beneficiaries to have appropriate access to items and services in Tennessee. If CMS believes 68 suppliers are adequate for the state of Tennessee, why were 98 suppliers awarded contracts? This raises serious questions as to how CMS determines demand in a given competitive bidding area and the capacity of suppliers to adequately service the area.

With Round 2 of DMEPOS Competitive Bidding scheduled for July 1, 2013, there have not been adequate assurances made that unlicensed or unaccredited suppliers would be identified and removed from the program prior to receiving a contract.

Additionally, based upon the methodology used by CMS to calculate pricing of items, the 30 suppliers had an impact on setting the single payment amount. Not only should the bids be removed, but it remains unclear to us how CMS can move forward with additional contracts because they do not have accurate pricing.

The issues we have touched upon are not isolated to just Tennessee. Our June 12, 2013 letter to Administrator Tavenner indicated that similar problems have been identified in Maryland and Ohio. Since then, we have received indication that unlicensed suppliers have been awarded contracts in Michigan.

For these many reasons, we respectfully request the OIG immediately begin an investigation into these issues and specifically whether CMS intentionally awarded contracts to these unlicensed companies, in an attempt to set a predetermined price point for DMEPOS categorized products.

We believe that competitive bidding can work, but only with significant changes. Carried out in a manner that is consistent with real market functions, the process has the potential to save Medicare funds, while simultaneously promoting innovation and quality products for those beneficiaries that utilize DME in their everyday lives.

However, provided the alarming information that has been presented to us, we believe it imperative for the OIG to investigate these irregularities immediately. We look forward to your reply.

Sincerely,



Glenn 'GT' Thompson
Member of Congress



Bruce Braley
Member of Congress

Enclosures: Reps. Thompson & Braley, et. al. to Administrator Tavenner – June 12, 2013
CMS to the Honorable Phil Roe – June 14, 2013