

**STATEMENT SUBMITTED FOR THE RECORD**

**On behalf of the**

**American Medical Association**

**American Occupational Therapy Association**

**American Optometric Association**

**American Physical Therapy Association**

**American Podiatric Medical Association**

**Medical Group Management Association**

**United States House of Representatives**

**Committee on Ways and Means**

**Subcommittee on Health**

**Hearing on Medicare Durable Medical Equipment, Prosthetics, Orthotics, and  
Supplies (DMEPOS) Competitive Bidding Program**

**May 6, 2008**

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to submit this statement for the record and will limit our joint comments to addressing two requirements established by the Medicare Modernization Act (MMA) in the *Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)* that are problematic for the members of each of our organizations.

First let us note that our organizations appreciate that the Centers for Medicare & Medicaid Services (CMS) exempted physicians and “treating practitioners” from having to participate in the competitive bidding program when they provide certain specified DMEPOS to their own patients as part of their professional services, and when the items are billed using a billing number assigned to these practitioners.

We are concerned, however, with two requirements that could have an adverse impact on Medicare patients. First, we believe that requiring physicians and licensed health care professionals (hereafter referred to as health care professionals) to be accredited in order to continue supplying DMEPOS when treating patients is both financially and administratively burdensome.

Second, we believe that CMS is inconsistent in its application of competitive bidding requirements for health care professionals for such items as off-the-shelf orthotics (OTS), crutches, canes, walkers, eyeglasses following cataract surgery, and folding manual wheelchairs when provided as part of their professional service.

The clinical judgment and expertise of health care professionals is critical for selecting, sizing, and fitting DMEPOS, as well as educating patients on their use. Many patients require immediate access to such items for immobilization, injury support, facilitation of safe mobility, or post-surgical recovery. It is unsafe and clinically inappropriate to delay or deny a patient's access to items such as orthotics, eyeglasses, or ambulatory support devices, or to send a patient out of a practitioner's office without the necessary DMEPOS.

### ***Accreditation***

In the MMA, it appears there is no recognition that health care professionals who supply DMEPOS integral to patient care are wholly dissimilar from suppliers who furnish DMEPOS products to the public as their primary source of income. There is also a lack of recognition that health care professionals not only prescribe appropriate items of DMEPOS, but must frequently and expertly dispense and educate patients on their use at point of treatment.

As a result, CMS has made relatively few accommodations for the more than 38,000 physicians who currently have DMEPOS supplier numbers, as required by CMS, in promulgating supplier accreditation standards. Health care professionals are not in the business of providing DMEPOS to the public as a business, and we believe it is

unwarranted and unreasonable to require them to be accredited in order to provide the patient services for which they have been educated, trained, and licensed.

Furthermore, as of March 1, 2008 Medicare required health care professionals who are either new to the program or are existing suppliers looking to open a new practice location to become accredited prior to obtaining a national supplier clearinghouse (NSC) number. This requirement is unduly burdensome and unjust to health care professionals who are just beginning to practice or are looking to expand the quality of the integral services they provide to their patients. The deadline for existing suppliers not changing their practice is September 30, 2009.

Health care professionals who provide DMEPOS products to their Medicare patients are licensed by the state in which they practice and are thus subject to a wide range of state regulatory and other requirements. DMEPOS suppliers who are not health care professionals obviously do not and cannot satisfy these requirements.

CMS' claims data indicates that DMEPOS products furnished by health care professionals make up a small portion of the Medicare-covered DMEPOS charges – slightly more than 3 percent according to 2004 claims data. It is unclear, therefore, what, if any, program improvement or cost savings would be realized by imposing these requirements on health care professionals who only dispense DMEPOS when providing patient treatment.

Consider, for example, that some health care professionals who supply DMEPOS receive an average total reimbursement (gross) of \$7,000 per year from Medicare for these products. Accreditation costs approximately \$3,000 per office for up to a three-year period. The accreditation process is time-consuming, expensive, and heavy on paperwork – precisely the type of barrier that large companies are equipped to surmount, but which pose special difficulties for small health professional businesses that do not or cannot afford to hire additional full-time regulatory compliance staff.

A supplier manual from one of the CMS-sanctioned accrediting organizations for physicians is 128 pages, and represents the administrative red tape for meeting the CMS requirements. It is not difficult, therefore, to understand why health care professionals find it impractical to seek accreditation just to continue dispensing relatively small quantities of DMEPOS in their offices. It would essentially be impossible to recoup these costs given the amount Medicare pays for the small quantities of DMEPOS products furnished to their patients.

Additionally, many of the DMEPOS supplier quality standards and proposed enrollment safeguards do not make sense in the context of a health care professional's practice. For example, it would not be practical nor would it appear to serve any useful purpose to require all the health care professionals in a large professional building to each have a sign visible at the main entrance of the building with their business hours (as recently proposed).

Similarly, health care professionals are concerned that the proposed enrollment safeguard precluding a DMEPOS supplier from sharing a practice location with another Medicare supplier, "including a physician/physician group or another DMEPOS supplier," would inappropriately prevent a health care professional from providing both DMEPOS products and professional services to patients in the same practice location.

Ultimately, requiring additional, unnecessary, and redundant accreditation requirements of health care professionals may keep them from dispensing necessary DMEPOS items at point of treatment. Unfortunately, this could inconvenience or endanger Medicare beneficiaries, and compromise the health care professional's objective of providing the most appropriate quality care and of doing patients no harm.

The only other available alternative would be to refer the beneficiary to a DMEPOS retail supplier, which may be unsafe for the beneficiary, prolong access to appropriate treatment, or, even worse, prevent the beneficiary from receiving the proper item because there is no DMEPOS retailer in close proximity. Sadly, either outcome would be a gross

disservice to Medicare beneficiaries and place health care professionals at risk for not immediately providing necessary care.

***Inconsistent Exemptions from the Competitive Bidding Process***

A second immediate concern is that, while we appreciate that CMS exempted physicians and “treating practitioners” from having to participate in the competitive bidding program when they provide certain specified DMEPOS to their own patients as part of their professional services, there seems to be an inconsistency in how the determinations were made for who would be exempt for what products.

For instance, CMS did not exempt physicians and what they term “treating practitioners” who dispense off-the-shelf (OTS) orthotics, but did exempt them from bidding for other DME (crutches, canes, walkers, and folding manual wheelchairs). Alternatively, physical therapists (PTs) and occupational therapists (OTs) are exempt for OTS orthotics, but not for crutches, canes, walkers, and folding manual wheelchairs.

Failure to exempt physicians and “treating practitioners” from having to competitively bid to furnish OTS orthotics to their patients, and failure to exempt PTs and OTs from the competitive bidding process for select DME, including, crutches, canes, walkers, and folding manual wheelchairs, could cause significant access and patient safety issues.

Providing such DMEPOS items is an integral part of patient care for many health care professionals. Failure to provide these exemptions to all health care professional groups is inconsistent and raises significant access and patient safety concerns.

Given the inconsistency of the DMEPOS final rule, and the threat to patient care posed by health care professionals being effectively prohibited from providing certain DMEPOS, the undersigned organizations have strongly urged CMS to permit health care professionals to continue supplying the aforementioned DMEPOS items to their patients without participating in the competitive bidding or accreditation processes.

We look forward to working with the House Ways and Means Committee and CMS to find a way to address these accreditation concerns and to avoid access issues for patients who rely on health care professionals to provide DMEPOS as part of their care.