Written Statement of

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Before the House Ways and Means Subcommittee on Health

On the Issue of Competitive Bidding of Durable Medical Equipment under the Medicare Fee-For-Service Program

1100 Longworth House Office Building

May 6, 2008

Chairman Stark, Ranking Member Camp, and Members of the Subcommittee:

Thank you for this opportunity to testify on Medicare's competitive bidding program for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies ("DMEPOS"), scheduled to begin being implemented in less than two months from today.

My name is Peter Thomas and I am an attorney with the law firm of Powers, Pyles, Sutter and Verville, P.C. I am here today representing the Consortium for Citizens with Disabilities ("CCD") Health Task Force. The CCD is a coalition of over 100 national disability-related organizations working together to advocate for federal public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. CCD members include the National Multiple Sclerosis Society, the Brain Injury Association of America, United Cerebral Palsy, and United Spinal Association, to name a few. The CCD Health Task Force focuses on health care policy from the perspective of people with disabilities and chronic conditions and, as such, I am testifying today to bring forth the views of Medicare beneficiaries, particularly those with significant health care needs.

I am also here as an individual with personal experience with a disability. My 34 years walking on artificial legs has demonstrated the vital role that assistive devices can play in the health, function, rehabilitation, and independent living of people with disabilities, including Medicare beneficiaries. And it is important to remember that in addition to seniors, the Medicare program serves the health care needs of over six million beneficiaries below the age of 65 who have become Medicare eligible due to a disability that is severe enough to prevent them from working.

Many CCD member organizations opposed the Medicare DMEPOS competitive bidding program since 1997 when the competitive bidding demonstration projects were authorized by statute. The current competitive bidding program was authorized in the Medicare Modernization Act of 2003 ("MMA") over the objection of many disability-related groups. Those same groups, and more, remain deeply concerned about the impact of this program on Medicare beneficiaries. This is because we believe this program disproportionately impacts and unfairly places at risk some of Medicare's most vulnerable beneficiaries—individuals with disabilities and chronic conditions. We fail to see why Congress and the Administration

would single out vital assistive devices and technologies under the Medicare *fee-for-service* program to be provided by the lowest bidder when other benefits are not exposed to this potentially harmful practice.

The hallmark of the Medicare fee-for-service program is patient choice of provider/supplier. Accessing the provider of choice is an important quality assurance mechanism, as any beneficiary can simply choose another qualified provider if their current provider is not meeting their needs. The current fee schedule makes price a constant variable and makes suppliers compete for Medicare beneficiaries by providing excellent service, meeting patients' needs, establishing reliable and long-standing relationships with physicians who refer patients to suppliers. When competitive bidding is employed, the sole variable becomes price, while service, patient satisfaction, patient choice, and access are presumed to be equivalent from one supplier to another. As such, the fee schedule amount of an assistive device may decrease, but so will the quality of care.

This is particularly important to beneficiaries who have significant health care needs on an ongoing basis. If a beneficiary is not concerned about choice of provider and would prefer to spend a little less on copayments under Medicare Part B, they are free to choose to enroll in a Medicare Advantage plan. Policymakers who have concerns about the restrictions and disincentives in Medicare Advantage plans should not be in favor of extending these same principles to the Medicare fee-for-service program, as the current law will do.

To date, the competitive bidding program has been largely viewed as a provider/supplier issue centered on the price that Medicare pays for durable medical equipment and supplies ("DME"). (Although competitive bidding generically applies to the DMEPOS benefit, all prosthetic limbs and most orthotic braces are exempt from competitive bidding due to the fact that they are highly customized to the patient and require significant clinical services.) Although CCD and other consumer groups have long opposed competitive bidding, it has been the DME/home care industry that has been most vocal on this issue. However, as we now begin to see the details of implementation of this program and the real-life impact that these enormous changes in the benefit will have on beneficiaries, we feel that the consumer voice needs to be amplified.

CMS is about to begin a massive experiment and individuals with disabilities and chronic conditions are the unwitting participants. The public awareness of this program is extremely low and we are convinced

that many thousands of Medicare beneficiaries with long term disabilities and chronic conditions will awake on July 1st to find that they no longer have access to their trusted DME supplier. These beneficiaries will have to start anew with another supplier, one who may be less convenient and less familiar with beneficiaries' specific needs. We as consumers must underscore at this point that assistive devices and technologies are not interchangeable, luxury items, but, instead, are essential tools with which we create independent lives. In our opinion, experimenting with the quality of and access to these devices is risky and simply not reasonable.

That being said, we are *not* opposed to adjusting Medicare reimbursement levels for items and services to make them more reasonable for beneficiaries. And we recognize the benefits to consumers of lower reimbursement levels in the form of reduced co-payments. However, there are currently mechanisms in place for CMS to adjust reimbursement levels, such as the inherent reasonableness process. It is our strong belief that the modest decreases in co-payments that will result from the competitive bidding program simply do not outweigh the price that beneficiaries with disabilities and chronic conditions will pay in the form of reduced access, quality, and choice.

Although CCD does not support competitive bidding, we do support the Medicare Modernization Act's requirements that DMEPOS suppliers become accredited and meet certain quality standards in the provision of care. These requirements are vital to help ensure that all beneficiaries receive the highest quality devices and technologies to meet their medical and functional needs.

CCD Concerns with Competitive Bidding for DMEPOS

Although there has been a significant lack of beneficiary education from CMS leading up to the roll out of this program, the CCD Health Task Force is beginning to hear from members and numerous other stakeholders regarding the potential threats to assistive devices and technologies under this program. As a result, we have objectively analyzed the program and I will summarize our current concerns.

Decrease in the Quality of Devices, Products, and Technologies: CMS estimates that, on average, the price Medicare will pay suppliers for the targeted products is 26% lower than current payment rates. These dramatic price reductions provide disincentives to suppliers to offer the highest quality devices and products. The likely decrease in the quality of assistive devices and technologies, especially highly

individualized or complex devices and technologies, threatens the ability of the beneficiary to be as functional and independent as possible. Additionally, the use of improper equipment could result in related medical complications (e.g. bed sores, shoulder injuries) for the individual and the costs of treating these complications will likely diminish significantly the cost savings from competitive bidding. Furthermore, because many private payors take their reimbursement cues from Medicare, we expect that individuals with private insurance will eventually face many of the same quality issues as Medicare beneficiaries when competitive bidding is implemented.

Access to Related Services: Often individuals with significant disabilities such as spinal cord injuries, cerebral palsy, multiple sclerosis, and amyotrophic lateral sclerosis ("ALS"), require assistive devices that must be fitted and/or programmed to meet their individual needs. In addition, technology assessments, home evaluations, and other specialized services are regularly performed in order to ensure that the appropriate equipment is provided. Suppliers often have 24-hour hotlines for emergency service and strive to maintain quick turn-around times on repairs. With the significant decrease in reimbursement to suppliers for the competitively bid items and, from what we understand, the inexperience of many of the potential contract suppliers to provide the benefits they have been selected to provide, CCD members are extremely concerned that these related services will either be restricted or no longer available to consumers.

We would like to make clear that time-consuming services provided to beneficiaries such as fittings, refittings, evaluations, programming, repairs, etc., are not optional services, but instead, are vital to the safe and effective use of many assistive devices and technologies.

Access to Suppliers: It is our understanding that suppliers, when bidding, offered CMS an estimate of the percentage of the population in a metropolitan statistical area ("MSA") that they believed they would be able to serve. CMS then used these estimates to determine which suppliers would be offered Medicare contracts without, apparently, conducting any independent verification of these supplier estimates. It is also our understanding that CMS expected approximately 15,000 bids to be submitted for the first round of the program but received just 5,000. We also understand that across the 10 MSAs, CMS only offered 1,300 contracts to suppliers, even though they expected to award 9,000. We expect the result to be a significant decrease in the number of suppliers available to Medicare beneficiaries and CCD is very concerned that this decrease, combined with the unverified manner in which CMS has determined the

number of suppliers necessary in each MSA, will result in serious access problems.

For example, Lisa is a Medicare beneficiary with quadriplegia who uses a custom seating and positioning system to promote proper posture and preserve skin integrity while using her wheelchair. She currently receives services at a specialized seating clinic, often the only setting where a beneficiary in need of specialized seating systems can be served properly. However, the suppliers that serve the seating clinic were not offered a contract by CMS under the competitive bidding program and, as a result, Lisa will loose access to the comprehensive "team" approach available only at this type of clinic. Instead, she will have to travel ten miles farther to the next appropriate supplier who will not be able to provide services using this team approach. It is important to note that many individuals will also face the new and difficult burden of physically accessing a new supplier who is located much farther from their home or in a location that is more difficult for them to access. For individuals with severe disabilities, this new burden cannot be underestimated.

Impact on Beneficiary-Supplier Relationships: Many Medicare beneficiaries may wake up on July 1st to find that they can no longer purchase items from their supplier with whom they have worked for many years. Many suppliers have detailed knowledge of their patients' disabilities and related conditions, and a history of providing them with the most appropriate devices to meet their needs. These long-standing beneficiary-supplier relationships could be considered one of Medicare's best defenses against fraud and abuse and an important quality indicator; however, many of these relationships will be broken as a result of the competitive bidding program.

For example, John, a power wheelchair user, had a spinal cord injury when he was in high school and has been going to the same supplier, located just four blocks from his home, for over 20 years. This supplier has detailed knowledge of his disability and related conditions such as prior decubitus ulcerations, contractures, and "overuse syndrome" in his shoulders, all conditions secondary to his disability. As a result, this supplier has a history of providing John with the most appropriate wheelchair and related accessories to meet his changing needs. However, because this supplier was not selected as a contractor in the Medicare competitive bidding program, as of July 1st, John will have to start all over with a new supplier. The new supplier has no historical knowledge of his particular disability and related needs, does not carry the specific brand of wheelchair he has used for years, and is located more than five miles from John's home.

Access to Brand Name Devices: Individuals who use assistive devices will tell you that consumer preference for a specific brand is an important factor when determining the most appropriate device. Competitive bidding will force many individuals to switch to new suppliers who may not offer the same brands of devices that they are accustomed to using. A forced substitution in brand could significantly impact the functional level of an individual, thereby impacting their health and functional status.

CCD's Policy Recommendations to Congress

Congress intended the competitive bidding program to be phased-in over a several-year period by 2010. Unfortunately, because CMS fell behind in the implementation of the first round, the agency has accelerated the implementation of the second round, to be implemented in 70 MSAs next year, in order to meet the 2010 statutory deadline. This accelerated timeline means that CMS will be expanding competitive bidding virtually nationwide with very little data on the impact of the program on Medicare beneficiaries. It also leaves little time for Congress to act to protect consumers.

For the reasons stated in this testimony, we urge Congress to eliminate DMEPOS competitive bidding entirely so as not to subject Medicare beneficiaries, especially those with disabilities and chronic conditions, to a system that compromises access, quality, and choice. CMS currently has at its disposable mechanisms to adjust prices when Medicare reimbursement levels are deemed unreasonable, and it should use those existing authorities to adjust reimbursement levels when necessary.

If competitive bidding proceeds to be implemented, we urge Congress to delay implementation of the first round of DMEPOS competitive bidding until significant flaws in the selection process and number of suppliers are addressed and until safeguards are in place to protect the consumer.

We urge Congress and CMS to delay the second round of DMEPOS competitive bidding in order to allow CMS and stakeholders appropriate time to assess and address the impact of the first round on all Medicare beneficiaries, especially people with disabilities and chronic conditions.

We strongly support Congressional efforts to exempt items from competitive bidding that must be uniquely "fitted" and individualized for the specific user. CCD supports the Medicare Access

to Complex Rehabilitation and Assistive Technology Act (HR 2231/S. 2931), legislation to carve-out complex assistive technology and devices such as seating, positioning, and mobility devices and speech generating devices from the competitive bidding program, with the goal of protecting appropriate access.

We urge Congress and CMS to allow beneficiaries with disabilities and chronic conditions to keep their current supplier under the competitive bidding program in order to ensure continued quality and choice of supplier. One method may be to allow Medicare beneficiaries to "opt-out" of the competitive bidding network and continue accessing their supplier of choice at the Medicare DMEPOS fee schedule amount. Quality would be ensured as consumers would have the right to pay less under competitive bidding or continue to pay a higher copayment with their long-standing suppliers. Considering the potential for significant disruptions in service if the first round of competitive bidding proceeds on July 1st, this proposal seems imminently reasonable, at least for the first year or two of implementation.

We urge CMS to establish a separate toll-free number and ombudsperson for beneficiaries to use regarding competitive bidding questions and concerns. Consumers will have numerous and important questions regarding the changes in the DMEPOS benefit and a specific toll-free number and access to an ombudsperson are important safeguards in implementation of this program. Such a dedicated toll-free number would also allow Congress to more accurately monitor the impact of competitive bidding on Medicare beneficiaries.

Reforming Competitive Bidding in a Difficult Fiscal Environment

CCD usually does not address Medicare reimbursement issues involving providers and suppliers unless the policy proposals at issue impact access to quality care. DMEPOS competitive bidding is such a case and, in this difficult fiscal environment and with the implementation date for competitive bidding looming, we offer the following thoughts.

First, any and all alternatives to competitive bidding that are considered by Congress, if designed to be budget neutral, should ensure that beneficiaries are not harmed by compromised access, quality, and choice.

Second, if Medicare DME fee schedule adjustments are to be made as an alternative to competitive bidding, we would argue that such adjustments must be confined to the range of DME items subject to competitive bidding, rather than an across-the-board fee schedule adjustment. For instance, prosthetic limbs, orthopedic braces, and a range of other DMEPOS items are not included in competitive bidding and they should not be affected if Congress decides to adjust certain fee schedules to make budget neutral changes to competitive bidding.

Conclusion

CCD is very concerned that competitive bidding will significantly threaten access to and quality of assistive devices and technologies that are essential components of the health and independence of individuals with disabilities and chronic conditions. We call on Members of Congress and the Administration to delay implementation of the program and initiate appropriate safeguards to ensure that individuals with disabilities are not harmed by the upcoming changes in this important benefit.

I thank you for this opportunity to testify before the subcommittee and welcome your questions.