June 18, 2009

Office of Management and Budget
Office of Information and Regulatory Affairs
Attention: Centers for Medicare & Medicaid Services Desk Officer
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RE: CMS-10169 Agency Information Collection Activities: Submission for OMB Review; Comment Request

The National Community Pharmacists Association (NCPA), which represents the interests of pharmacist owners, managers, and employees of more than 23,000 independent community pharmacies, employing nearly 60,000 licensed pharmacists and over 300,000 additional employees across the United States, submits the following comments on CMS-10169 Paperwork Reduction Act Agency Information Collection Activities that will be undertaken by the Centers for Medicare & Medicaid Services (CMS) for purposes of the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program.

As was the case in the aborted first round of competitive bidding in 2008, because of economies of scale, our members will largely be unable to submit bids that can win competitive bidding contracts in the upcoming reconstituted first round of competitive bidding. NCPA not only has concerns about precedents set for future rounds of competitive bidding involving more product categories, but we also have important concerns about the bidding, quality and choice standards for mail order diabetes test supplies and the flaws in the aborted first round that apparently will not be adequately addressed in the upcoming new first round.

First and foremost, any form of Part B DMEPOS competitive bidding must ensure that patients have access to a broad range of DMEPOS, particularly diabetes testing supplies. Accordingly, CMS should apply the Medicare Improvements for Patients and Providers Act of 2008 requirement that winning bidders in future rounds must provide a range of diabetic test supplies representing at least 50% of the market volume of all such types of products, to the Round 1 Rebid. The halted first round demonstrated that the diversity of products offered by the winning suppliers was significantly more narrow than the range of products currently being used by Medicare beneficiaries. Most Medicare beneficiaries in the initial competitive biding areas would not have been able to obtain access to their current diabetes testing supplies through the winning bidders. CMS should therefore apply the statutory requirement to the Round 1 Rebid.

To enforce this requirement, suppliers should be required to account for the actual products placed as compared to the products they included in their bid. Failure to include such a requirement will ultimately reduce the criteria for winning a bid to submitting the lowest bid. If CMS were to follow through on its plan to

not require accounting of actual products sold, the marketplace will be driven to low cost, but generally inferior products that suppliers will be pressured to substitute in order to win bids – products that will not meet the quality of the products that they originally list. The quality of patient care will accordingly decrease.

In addition, to facilitate CMS monitoring of contract supplier product offerings, NCPA advocates that CMS direct contract suppliers to include the pertinent product UPC or NDC-like codes on their CMS 1500 claim forms. This is a practice that many private payers and State Medicaid programs already undertake. Including such information will help CMS to conduct oversight of how the program is actually being implemented and to determine if Congressional intent under MIPPA to maintain broad product choice for beneficiaries has been achieved.

Preserving product choice might result in higher aggregate competitive bidding prices than if competitive bidding awards were based solely on the lowest bids made by suppliers. Congress has clearly chosen, however, to uphold patient access to a variety of the most popular products through Section 154 of MIPPA. NCPA believes that not only will reduced health outcomes result from CMS not enforcing higher quality standards, but overall health care costs will also rise if quality standards are not raised in a revised competitive bid process.

CMS has full authority to safeguard patient care and emphasize reduction of long term costs by implementing stronger quality and patient care standards in its competitive bidding program. NCPA believes that beneficiaries would be better served if CMS were to implement rulemaking to revise the bidding process in order to establish a more beneficiary-centric competitive bidding program.

NCPA thanks CMS for the opportunity to submit these comments and welcomes further dialogue regarding the recommendations contained herein.

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