

March 20, 2017



The Honorable Tom Price, M.D.
The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Subject: Requested Regulatory Reform Priorities for DMEPOS Suppliers

Dear Secretary Price,

On behalf of VGM Group Inc. and our membership of over 2,400 independent home medical equipment suppliers across the United States which spans 6,000 rooftops, we respectfully request you review Medicare's polices that affect the durable medical equipment, complex rehab technology, orthotics and prosthetics sectors of the health care system. Within this letter, we will lay out what our membership has identified as the immediate and long-term challenges that suppliers are facing that impact the quality of care being delivered to the Medicare beneficiaries they serve.

During the prior administration, independent home medical equipment providers were faced with extremely over-burdensome regulations, when compounded with flawed CMS programs, contributed to the approximately 34 percent reduction in HME suppliers in the period from 2013-2017. Not only are there fewer suppliers in the market providing care, many suppliers have had to reduce the service areas that they cover, forcing patients to stay in a hospital for longer or often times go without the necessary equipment they need to live a high quality of life.

As you know all too well, Mr. Secretary, the competitive bidding program, originally tasked with minding the interests of taxpayers and creating competitive environment, was designed in an extremely poor fashion. It has resulted in reimbursements being pushed to unsustainable levels in competitively bid areas. In 2016, the program, designed for urban, densely populated areas, was rolled out nationwide to apply regional single payment amounts to non-competitively bid areas. This has made it even more difficult for suppliers in rural America to provide care for patients due to the higher costs of delivering care in a rural area when compared to an urban area. This misguided CMS program showcase, the flaws of one-size-fits-all, bureaucratic program.

The following are issues that must be addressed immediately in order to slow the amount of suppliers closing their businesses on a monthly basis:

1. Implementation of Section 16007 in the Cures Act to Retroactively Reimburse Suppliers

Beginning July 1, 2016, suppliers faced reimbursement cuts of nearly 50 percent as outlined by 414.210(g)(9), which was retroactively delayed with passage of the Cures Act. On February 10, 2017, CMS submitted Change Request 9968, which notified the DME MACs that they could begin dispersing allocated funds beginning on May 1 with implementation by July 3, 2017. This delay is unnecessary as more suppliers are forced to close their businesses on a weekly basis while waiting for payments on services provided nearly one year prior. This delay is causing suppliers to run into

problems with creditors and bankers, as they do not have any certainty on when this additional revenue will be paid in full.

Regulatory Recommendation:

Based on your authority as Secretary, through the issuance of an IFR, we request CMS adjust this date to reflect this urgency and direct the DME MACs to begin dispersing these reimbursements immediately. In all likelihood, as currently outlined in Change Request 9968, it could be August or September before suppliers are paid in full, and returning this delayed cash flow is critical for suppliers to keep their businesses open. The DME MACs must have a set completion date for this policy, which in our interpretation of current guidelines, does not exist.

2. Delaying Reimbursement Cuts Beginning January 1, 2017

As the number of suppliers continues to decrease, causing access issues for patients, and Congress urges CMS to delay cuts to reimbursements, the agency has continued to implement cuts beginning on January 1, 2017. The agency did this without analysis of the program as required by the Cures Act, which to our knowledge prior to date of this letter, is yet to be published. Section 16007(b) of the Cures Act directs CMS to produce a report outlining impacts on beneficiaries. These cuts will continue to increase costs to other areas of the health care sector.

Regulatory Recommendation:

Based on your authority as Secretary, using an IFR, we recommend that CMS be directed to immediately delay the January cuts until the program is assessed by the incoming administration and the effects that these cuts have on patients are known. CMS must also take into account the different costs structures for suppliers to provide care in rural and urban areas while determining regulations that affect reimbursement amounts.

3. CMS Applying “Double Dip” on Oxygen Concentrators

In 2017, CMS incorrectly applied a budget neutral “offset” to 2017 rural fee schedules for oxygen concentrators. This led to an improper reduction in reimbursement for HCPCS E1390 by an additional 11 percent on average. This forced reimbursement rates in rural areas below the average regional competitive bidding special payment amounts (SPA). The misapplication of this language, which comes from The Omnibus Budget Reconciliation Act of 1987, must be corrected quickly in order for the existing regulations to be followed. This “double dip” has resulted in providers reducing service in non-CBA areas for oxygen concentrators.

Regulatory Recommendation:

In order to prevent care disruptions for patients, we ask that under your authority as Secretary, CMS restores the 2017 rural payments for oxygen concentrators to the appropriate levels using current methodology based on SPA based adjusted fee schedules.

While the issues listed above are key to slowing the immediate reduction in suppliers across the country, to preserve access to care the following four recommendations are reforms which may require additional time to implement but will increase the sustainability of these programs.

1. Reform the Competitive Bidding Program by Implementing Market Pricing Program

The most sustainable alternative to competitive bidding is replacing it with your proposal of “The Medicare DMEPOS Market Pricing Program.” As you are aware, this program would change the process to a true auction system, which economists and auction experts have strongly supported. Implementing these changes would ensure that the program maintains sustainability by implementing market-based bidding and that it remains competitive by allowing providers of all sizes to create a truly competitive bidding system.

Regulatory Recommendation:

We strongly support your previous efforts to conduct a demonstration program led by CMS in 10-12 current competitively bid cities. This market-based program would properly recognize the supplier costs to service patients and result in real competition. This competitive environment would protect access to care for some of the most vulnerable patients in our health care system, while producing great savings to the government by reducing the amount of hospital admissions. We recommend that this be included in the proposed competitive bidding Round 2019.

2. Addressing the Growing Backlog of Audit Appeals with CMS

Medical equipment suppliers throughout the country who provide and service home medical equipment for Medicare beneficiaries are experiencing excessive, unreasonable denials of payment by CMS due to the contractors that analyze claims. The current backlog of appeals is projected to grow from 757,090 to 1,003,444 by FY2020. Meanwhile, beneficiaries, whose lives rely on wheelchairs, oxygen and other equipment for their independence, wait long periods for their equipment as private contractors representing CMS exceedingly define their medical equipment needs as medically unnecessary.

Regulatory Recommendation:

CMS should support the prior authorization process proposed by Rep. Marsha Blackburn (R-Tenn.) which seeks to develop and implement improved prior authorization processes which will reduce the amount of red tape suppliers have to work through while ensuring that bad actors may still be removed from the system.

3. Complex Rehab Technology Separate Benefit

Individuals with disabilities are greatly dependent on highly specialized mobility equipment to meet their individual needs. This equipment includes wheelchairs, seating systems and other equipment that requires trained professionals to evaluate, configure, fit and program the wheelchairs to maximize the independence of the individual. These specialty configurations also prevent further complications for the patient, including pressure ulcers, osteoporosis, spasticity and more. While durable medical equipment providers and complex rehab providers overlap in many cases, the equipment that is being provided must be recognized within its own category.

Regulatory Recommendation:

Establish a permanent recognition of complex rehab technology by creating a separate benefit category within Medicare to allow CRT to be separate from standard durable medical equipment. VGM supports the language in H.R. 750, and we recommend that CMS take separate regulatory action to support these same changes.

4. TRICARE Reimbursement Reductions Threaten Veteran's Access to Care

TRICARE has reduced reimbursements for durable medical equipment for providers from 10 to 55 percent in addition to the drastic cuts that Medicare reimbursements have received over the past six months. This illustrates an industry trend that must be reversed as providers are making every effort to weather the storm of the massive reimbursement reductions across the board.

Regulatory Recommendation:

TRICARE reimbursement rate reductions must be re-evaluated in order to ensure high quality care is delivered to our nation's bravest who have served their country. Suppliers must be able to sustain the costs of providing this care, and because of reductions in nearly every other area of their business, it is increasingly difficult for providers to maintain that level of care. We request that you, in your role as Secretary, to request Secretary Shulkin, and the Department of Veterans Affairs to adjust Tricare reimbursement rates that match Medicare fee schedule. This adjustment will ensure that our nations bravest have the ability to access the vital care that they need and deserve.

Summary

We believe that by implementing these reforms, there will be much greater sustainability within the home medical equipment industry and reduced strains in many other areas of the health care sector. The list of additional health care providers who stand to benefit from these recommendations include ambulatory services, hospitals and emergency departments. DME suppliers can return patients to the comfort of their own homes in a quick and efficient manner. This avenue of care within the home leads to better health outcomes and overall patient independence, all while providing greater savings to the health care system.

We, at VGM Group, Inc. look forward to the opportunity to initiate our grassroots membership to provide input on these measures and be a part of the process moving forward.

At Your Service,

John E. Gallagher
Vice President, Government Relations
VGM Group, Inc.