

September X, 2017

The Honorable Mick Mulvaney  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Director Mulvaney:

We are writing today to express our deep concerns with the Centers for Medicare and Medicaid Services' (CMS') policies and regulations related to the Durable Medical Equipment (DME) benefit in the Medicare program. Over numerous years, CMS has made significant policy and regulatory changes that have resulted in significant reductions in reimbursement. We are concerned that these reductions may have caused access issues for Medicare beneficiaries and shifted costs to other areas of Medicare.

While we strongly support CMS saving money for the American taxpayers, the agency should not make significant reductions at the expense of beneficiaries and shift cost to institutional and clinical care. We understand that there is an Interim Final Regulation (IFR) at OMB entitled "Durable Medical Equipment Fee Schedule, Adjustments to Resume the Transitional 50/50 Blended Rates to Provide Relief in Non-Competitive Bidding Areas" (RIN 0938-AT21). We strongly urge you to take quick action and clear this rule to provide relief in non-competitive bidding areas. Specifically, we urge you to extend reimbursement rates effective on January 1, 2016 in non-competitive bid areas from January 1, 2017 to December 31, 2018.

The Patient Protection and Affordable Care Act (P.L. 111-148) required CMS to establish adjusted fee schedules for DME items in non-competitive bidding areas (CBAs), and explicitly required CMS to consider the costs of furnishing in these areas. We are concerned that CMS did not fully consider the costs of furnishing in non-CBAs leading to adjusted fee schedule rates that are now as much as 74 percent below unadjusted rates for the same item. Furthermore, CMS only gave suppliers six months to phase-in the new rates, disrupting suppliers' ability to serve beneficiaries in non-CBAs, and leaving beneficiaries who need equipment and supply items to face a potential crisis in access to DME products and services.

To provide immediate relief from these drastic cuts to DME items in non-CBAs, Congress included a provision (§ 16007(a)) in the 21st Century Cures Act (P.L. 114-255) that extended the reimbursement rates in effect on January 1, 2016 to December 31, 2016. This payment

methodology was based on a blended rate of 50 percent fee schedule rates and 50 percent competitive bid rates. Unfortunately, CMS has now released the modified fee schedule with recalculated competitive bid rates resulting in rates at a lower level. Specifically, the rates for oxygen concentrators (E1390) are 8.21% below the January – June 2016 published rates.

We urge you to use your authority to clear the IFR to extend relief in non-competitive bid areas by extending these rates starting on January 1, 2017 until 2019 when a proper calculation of rates that takes into account a number of cost factors indicated in § 16008(a) of the 21st Century Cures Act can take place.

Thank you for your attention to these important matters, and we look forward to your response. If you have any additional questions, please contact Megan Perez ([megan.perez@mail.house.gov](mailto:megan.perez@mail.house.gov)) with Representative Cathy McMorris Rodgers.

Sincerely,

Cathy McMorris Rodgers  
Member of Congress