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**BAUCUS, GRASSLEY, COLLEAGUES INTRODUCE BILL
TO DELAY MEDICAL EQUIPMENT BIDDING PROGRAM**

*Senators express concern that the bidding program
would limit Medicare beneficiary access to care*

Washington, DC – Senate Finance Committee Chairman Max Baucus (D-Mont.) and Ranking Member Chuck Grassley (R-Iowa) today introduced legislation that would delay implementation of the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) competitive acquisition program (CAP). The bill would also make the bidding process more fair and transparent, require suppliers to meet quality standards, and make other improvements to the program. Introduction of this legislation, which mirrors H.R. 6252, comes following reports of problems with implementation the program and concerns that the program would result in decreased access to care for Medicare beneficiaries.

“This is important legislation for Medicare beneficiaries,” said Baucus. **“Durable medical equipment can give seniors the freedom to live at home, and so it’s important to maintain a reliable system in Medicare to provide these vital items. I am supportive of competitive bidding as a means of reducing cost, but that cannot be accomplished at the expense of low quality and inconsistent care. The competitive bidding program for durable medical equipment should stay on hold until it’s certain that seniors will get the products they need in a way that works for them.”**

“This legislation will lead to lower prices and higher quality medical products while ensuring that beneficiaries will still have access to the medical equipment and supplies they need,” Grassley said. **“These improvements also will help prevent many small home medical equipment suppliers from going out of business. That’s especially important in states such as Iowa that are reeling from floods and tornadoes. The loss of many more small businesses would be disastrous to beneficiaries whose access to needed medical supplies has already been limited by the floods.”**

Baucus, Grassley, and other lawmakers have received numerous reports about potential problems with the implementation of the CAP program. These reports range from suppliers who believe they were wrongly disqualified to questions about the clarity and consistency of information that suppliers received during the bidding process. Some providers were awarded contracts to serve areas in which they did not previously have a presence. Other suppliers were awarded contracts for service lines with which they have little or no experience.

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Under current law, round one of the competitive bidding program is scheduled to begin on July 1. At that time, CMS will begin paying suppliers who have been awarded contracts to provide durable medical equipment, prosthetics, orthotics, and medical supplies to Medicare beneficiaries. CMS would subsequently implement round two in 2009, and following its completion, competitive bidding could be expanded across the country and prices may be adjusted in non-bid areas using information from the bidding program.

Under the Baucus-Grassley bill, contracts awarded under round one would be terminated and re-bid those areas. New round one contracts would then take effect in 18 to 24 months. Round two contracts could not take effect before January 2011 and payment adjustments for DMEPOS in non-competitive bid areas could not take effect until round two is completed.

The bill also makes improvements to the bidding process used by suppliers, to ensure they are providing the best possible price and service. These changes will help ensure that suppliers who are awarded bids are adequately meeting the needs of Medicare beneficiaries, and protects beneficiaries who might be disadvantaged by the bidding process, such as those who live in rural areas. The legislation also institutes measures to improve the quality of care including requiring accreditation and disclosure of subcontracting relationships. A summary is below.

The legislation is being co-sponsored by more than 20 Senators, including Sen. Debbie Stabenow (D-Mich.), Sen. George Voinovich (R-Ohio), Sen. Ken Salazar (D-Colo.), Sen. Pat Roberts (R-Kans.), Sen. Sherrod Brown (D-Ohio), Sen. Gordon Smith (R-Ore.), Sen. Bob Casey (D-Pa.), Sen. Susan Collins (R-Maine), Sen. Carl Levin (D-Mich.), Sen. Elizabeth Dole (R-N.C.), Sen. Joe Lieberman (I-Conn.), Sen. Johnny Isakson (R-Ga.), Sen. Ron Wyden (D-Ore.), Sen. Richard Burr (R-N.C.), Sen. Chris Dodd (D-Conn.), Sen. Olympia Snowe (R-Maine), Sen. Bernie Sanders (I-Vt.), Sen. Orrin Hatch (R-Utah), Sen. Maria Cantwell (D-Wash.), Sen. Ben Cardin (D-Md.), Sen. Charles Schumer (D-N.Y.), Sen. Hillary Clinton (D-N.Y.), Sen. Barbara Mikulski (D-Md.), and Sen. Blanche Lincoln (D-Ark.). Comments from co-sponsors follow here:

“We cannot allow a system break-down within Medicare to compromise access to life-saving health care equipment and supplies for our nation’s seniors.” **Sen. George Voinovich (R-Ohio)** said. “That is why I fought for this legislation. I agree that we must get Medicare and other entitlement spending under control, but a delay in the competitive bidding program is vitally important to ensure access to quality medical supplies and services under the Medicare program and to implement a comprehensive beneficiary education campaign prior to program changes going into effect.”

Sen. Pat Roberts (R-Kans.) said, “Since last summer, I have been sharing stacks of complaints from home health providers just trying to use the contractor’s website and getting inconsistent information from CMS throughout the bidding process. Now providers complain they are being wrongly disqualified from the program, with many of these businesses now fearing if they can keep their doors open. I am pleased to join with my colleagues today to introduce this critical bill to delay the program and give us more time to make sure this program is done right and seniors continue to get access to high quality home health services and equipment.”

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“It’s critical that seniors have uninterrupted access to prosthetics and other crucial medical equipment,” said **Sen. Sherrod Brown (D-Ohio)**. “We must not place the patients who need this equipment at risk. Period.”

“The competitive bidding process has already resulted in confusion and misinformation -- and all before the program begins. Given the importance of these services to our seniors, it is critical that we improve CAP before their health and independence are compromised,” said **Sen. Gordon Smith (R-Ore.)**.

“I am proud to co-sponsor this important bill that will address serious problems in the implementation of a new proposed bidding process for durable medical equipment under Medicare. The proposed implementation has been flawed from the start. This bill will ensure that the most important parties to this proposal - our older citizens - maintain affordable access to the equipment and supplies they need to live independently at home,” said **Sen. Bob Casey (D-Pa.)**

“The health and independence of many Medicare beneficiaries are dependent on the use of DME. This legislation is necessary to ensure an efficient and thorough CAP while protecting a patient’s access to high-quality and affordable care,” said **Sen. Joe Lieberman (I-Conn.)**.

“This legislation will help remedy a competitive bidding process which has unfairly shut out thousands of small businesses. The fact is, that in rural areas in particular, the exclusion of local firms will not only lower the level of service to patients, but in many cases appears unlikely to produce real savings,” said **Sen. Olympia Snowe (R-Maine)**.

“The launching of CMS’ competitive bidding process has thus far been plagued with problems and inconsistencies that have threatened to harm patient care and push many smaller suppliers out of business,” said **Sen. Ben Cardin (D-Md.)**. “This bill is necessary to ensure that suppliers of all sizes are treated fairly and patients receive needed supplies and equipment.”

“Like my colleagues, I support competitive bidding, but not at the expense of seniors and small businesses. The DME bidding demonstration cannot be implemented until we can ensure that seniors will continue to get high quality, reliable services from the Medicare program. New York City is in Round 2, and I have heard major concerns from suppliers about the process and the enormous size of the bidding area. CMS needs to slow down and address these real problems,” **Sen. Charles Schumer (D-N.Y.)** said.

“We in the federal government need to show seniors that the government is on their side. I am proud to co-sponsor this legislation, which is necessary to improve transparency and avoid any intended consequences this program may cause,” said **Sen. Barbara Mikulski (D-Md.)**, Chairwoman of the Health, Education, Labor and Pensions (HELP) Subcommittee on Retirement and Aging.

A summary of the legislation follows here.

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Legislation

Temporary Delay Rounds 1 & 2

- Terminate contracts awarded under Round 1 and re-bid those areas so that new contracts would take effect in 18-24 months.
- Round 2 contracts cannot take effect before January 2011.
- Payment adjustments for DMEPOS in non-competitive bid areas may not take effect until Round 2 is completed.

Offset

- In January 2009, eliminate the annual inflationary adjustment for all items covered by Round 1 of the competitive bidding program and reduce payment rates for those items by 9.5 percent nationwide. This policy does not affect diabetic supplies furnished by retail suppliers because they were not covered by the bidding program.
- Items that had been subject to the reduction would receive a 2 percent payment increase in 2014, except in any area where a competitive bidding contract is in effect or CMS has otherwise adjusted payment rates.

Bidding Process Improvements

- Require CMS to notify bidders about paperwork discrepancies and give suppliers the opportunity to correct within a reasonable time frame.
- Provide CMS the authority to subdivide MSAs with more than 8 million people.
- Exempt rural areas and MSAs with a population of less than 250,000 from competitive bidding for at least five years.
- Require that suppliers who bid on diabetic testing supplies offer brands that cover at least 50% of the market by volume (does not apply to Round 1).
- Before using its authority to adjust prices in non-bid areas, CMS must issue a regulation and consider how prices set through competitive bidding compare to costs for such items in non-bid areas.
- Require HHS's Office of Inspector General to verify calculations used to determine the pivotal bid amount and winning bid amounts.

Quality Measures

- Require all suppliers to be accredited by October 1, 2009. Ensure that all suppliers, whether they are billing Medicare directly or are a subcontractor to another supplier, be subject to accreditation.
- Require contracting suppliers to disclose all subcontracting relationships to CMS.
- Exclude physicians and other practitioners from DMEPOS accreditation requirements until CMS develops provider-specific standards. Allow CMS to waive physician accreditation if the agency determines they are subject other mandatory quality requirements.
- Establish a separate ombudsman within CMS to handle supplier and beneficiary issues related to the competitive bidding program.

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Other Changes

- Exclude complex rehabilitation wheelchairs and related accessories when furnished with such wheelchairs from competitive bidding.
- Exclude negative pressure wound therapy from Round 1 and require CMS to evaluate how these items are coded and paid.
- Exclude Puerto Rico from Round 1 re-bidding (did not receive enough valid bids in original Round 1 for CMS to award any contracts).
- Allow physicians and other treating practitioners to supply “off-the-shelf orthotics” to their patients without being awarded competitive bidding contract.
- Allow hospitals in bidding areas to supply the same DMEPOS items that physicians and other practitioners will be able to supply (those that are considered an integral part of professional services) without being awarded contracts for those items.
- Ensure that podiatrists and other similar practitioners can prescribe DMEPOS items by using broader definition of physician in Social Security Act. (This relates to a drafting error in MMA that pointed to the wrong definition of physician in the Social Security Act when requiring face-to-face examination in order to prescribe DMEPOS items.)
- Delay mandated GAO report to coincide with delay to Round 1 and expand scope of report.
- Implementation funding of \$120 million.

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