



July 10, 2025

via email

The Honorable John Thune
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Mike Johnson
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives
Washington, DC 20515

RE: CMS-1828-P and Statutory Limits on Competitive Bidding Authority

I write on behalf of the American Association for Homecare (AAHomecare) to express serious concern regarding the Centers for Medicare & Medicaid Services' (CMS) proposed rule CMS-1828-P, which contemplates the inclusion of urological, and ostomy supplies in the DMEPOS competitive bidding program. We believe this proposal exceeds CMS's statutory authority and undermines congressional intent.

Statutory Overreach

Section 1847(a)(2) of the Social Security Act explicitly limits the scope of the competitive bidding program to three categories:

- Durable Medical Equipment (DME) as defined in §1834(a)
- Parenteral and enteral nutrients, equipment, and supplies
- Off-the-shelf orthotics under §1861(s)(9)

Ostomy supplies are defined under §1861(s)(8), and urological supplies are referenced in section 1861(m)(5), neither of which are referenced in §1847(a)(2). The exclusion of these categories from the statutory language is deliberate and legally binding. Therefore, for CMS to include ostomy and/or urological supplies in the DMEPOS competitive bidding program, Congress would have to pass a law adding legal authority for CMS to include these items in the bid program.

Legal and Legislative Precedent

Congress has amended §1847(a) multiple times since the program's inception and has never included §1861(s)(8) and (m)(5) items. This consistent legislative inaction reinforces the conclusion that CMS's proposed expansion is ultra vires and vulnerable to legal challenge.

Policy and Access Risks

Beyond the legal concerns, the inclusion of these supplies in competitive bidding threatens to disrupt access for Medicare beneficiaries who rely on these medically necessary products. Suppliers may be forced out of the market, reducing patient choice and continuity of care—particularly for individuals with complex medical needs.

Request for Congressional Oversight

We respectfully urge Congress to:

- Reaffirm the statutory boundaries of the DMEPOS competitive bidding program.
- Direct CMS to withdraw any proposal that includes §1861(s)(8) and (m)(5) items without explicit legislative authority.
- Consider legislative clarification, if necessary, to prevent future regulatory overreach.

We welcome the opportunity to work with your office to ensure Medicare beneficiaries continue to receive high-quality, uninterrupted access to essential medical supplies. Thank you for your leadership and commitment to protecting patient care and upholding the rule of law.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Ryan". The signature is fluid and cursive, with a long horizontal stroke at the end.

President & CEO
American Association for Homecare
tomr@aaahomecare.org