Written testimony of Karyn Estrella, CAE, President & CEO
Home Medical Equipment and Services Association of New England
Small Business Administration Hearing - Portland, ME
May 16, 2016

My name is Karyn Estrella. I am the President and CEO of the Home Medical Equipment and Services Association of New England (HOMES). Incorporated in 1988, we are a six-state regional trade association representing home medical equipment and supply companies throughout New England.

Thank you for the opportunity to speak to you today about the burdens and negative impact that the Centers for Medicare and Medicaid Services (CMS) policies and regulations are having on small, independent companies. HOMES has **lost 43% of its members** in the past five years; most due to acquisitions by national companies, many others that have gone out of business. The companies that closed had been in business on average 20-30 years. They had decades of experience and took pride in the services they provided to their local communities. Five years ago, **86% of our membership were small, independent providers** (annual revenue of up to $6M). Today, it is a **startling 46%** and we anticipate that number to continue to drop. The culprits are the flawed DME competitive bidding program that began in New England on July 1, 2013, onerous documentation requirements and an audit process that is out of control. While CMS espouses the need to expand community and home-based care, its draconian policies are a cancer that is quickly spreading and killing the very industry that is the solution to rising healthcare costs.

When DME competitive bidding began in July 2013, 50% of our members were excluded overnight. CMS awarded 50% of the Medicare contracts in the New England Competitive Bidding Areas to companies hundreds, even thousands, of miles away. Many of these local companies served a large Medicare population and were unable to survive after exclusion. And it wasn't just small companies that were impacted. A large regional company with over 40 years' experience and $140M in annual revenue filed for bankruptcy within 60 days of the program starting. Their crime – being a large respiratory company that was not awarded any contracts. If a multi-million dollar company can't survive competitive bidding, how can a small, independently owned company? And based on the recently announced results of Round 2 Recompete slated to begin July 1st, CMS is no wiser today that it was 3 years ago. Again, they have awarded 50% of the Medicare contracts to companies outside of New England.

CMS' glaring ineptitude is evident in the nebulizer category. Beginning July 1st this year, 100% of the HME companies in New England will not be able to provide a nebulizer to a Medicare beneficiary because CMS awarded contracts to companies thousands of miles away. The closest in proximity to New England is a company in Alabama, the furthest is Puerto Rico. ***Puerto Rico***. Most nebulizers are prescribed to people with Chronic Obstructive Pulmonary Disease (COPD) who have been admitted to the hospital due to an exacerbation. These patients cannot be released without a nebulizer. Historically, the hospital would contact a local HME company that would either deliver

the equipment to the hospital or directly to the patient's home. How can a company from Alabama or Puerto Rico facilitate a timely discharge to get that patient safely home? Hospitals are not going to stock this equipment, nor are they set up to assist the patient once they go home. That is the job of the HME company – which is why they must be local.

As CMS has obliterated the number of small businesses and reduced reimbursement by more than 50% within the past 3 years, they have simultaneously increased their regulatory requirements. The implementation of the Face-to-Face rule where the HME company must ensure that the patient has been seen by their physician within 6 months of providing the equipment, collecting chart notes (and the provider must scrutinize these notes to make sure they have the information that auditors are looking for), remaining compliant with CMS' 31 supplier and accreditation standards, are only a few of the onerous requirements that these companies must abide lest they be audited and have the payment recouped; after which a 3-plus year wait to be reimbursed begins. And all the while, these companies must continue to maintain the equipment and deliver supplies – with no reimbursement, sometimes for years.

Many of our members have at least one full-time person working solely on audit requests, taking valuable resources away from patient care. There are many contractors conducting audits; some are incentivized to find as many "clerical" errors as possible to recoup money from these companies because they get paid a percentage of the amount of claims they deny. These errors include: not physically date stamping a faxed order (even though the fax machine prints the date), or not being able to read the physician's signature. Once the claim has been denied and monies recouped, the appeal process begins. The first two levels of appeal are conducted by CMS contractors and the denial is often upheld at these levels. In fact, many times denials at the second level of appeal are based on data that was originally sent with the claim. Then the provider has no choice but to ask for an Administrative Law Judge (ALJ) hearing which, due to the horrendous back log, will take 2-3 years or longer. CMS ramped up audit activity while failing to ramp up the number of ALJs to adjudicate an avalanche of appeals. For complex wheelchair companies, the recoupment of a $20-25,000 wheelchair, that must continue to be serviced and repaired by the company while they are going through the lengthy appeal process, causes an extreme financial burden. It should be noted our members report that approximately 95% of their claims are overturned by the ALJ for denials that are based on clerical errors, not medical necessity.

In its press release dated March 13, 2016 announcing the start of DME Competitive Bidding Round 2 Recompete, CMS claims ***"This program has been an essential tool to help Medicare set appropriate payment rates for DMEPOS items and save money for beneficiaries and taxpayers while ensuring access to quality items."*** Nothing could be further from the truth. In the past 3 years since the program began in New England, beneficiaries have not "saved" money – quite the opposite. Due to long wait times to receive equipment or because the closest contract provider is hundreds of miles away, many, many beneficiaries are buying their equipment – walkers,

wheelchairs, even hospital beds, for which there is no reimbursement from Medicare. Where is the justice in forcing Medicare beneficiaries to buy equipment (if they can afford it) when they should have access to a benefit they paid into involuntarily for decades only to be denied access to the benefit when they need it? Why are discharge planners in Boston hospitals sending patients home knowing the hospital bed and other equipment they need will not be delivered for 1-2 weeks when they used to have access to several local companies who competed to get that business? Why are people who need wheelchair repairs homebound, bedbound for weeks, and susceptible to pressure sores for which hospitalization is required because of the severe reduction of local providers to deliver this service to a very vulnerable population? How many more calls do our members need to receive from people crying to get repairs for their wheelchairs? And yet CMS claims that beneficiaries continue to have access to quality items. This is not our reality. This is not what we are witnessing every day. And it is going to get worse after July 1st when Round 2 Recompete begins with all new Medicare contracted suppliers and as they roll out the second wave of reimbursement cuts to providers in rural areas.

The HME industry needs help and we need help now before too many more companies go out of business. With more than 10,000 people turning 65 every day, and living longer, if CMS thinks it is paying too much for home medical equipment now, wait until there is a shortage of home medical equipment providers. They'll miss us when we're gone.

Thank you again for the opportunity to speak today. I am happy to answer any questions.

Karyn Estrella, CAE
President & CEO
Home Medical Equipment and Services of New England
515 Kempton Street
New Bedford, MA 02740
508-993-0700 / karyn@homesne.org