

# United States Congress

## Tennessee Senators, Representatives Ask for Details on Administration Medicare Policy that Violates Tennessee Law and Harms Tennessee Businesses

*Ask for information on policy of awarding Medicare contracts to businesses not licensed in Tennessee*

\*\*\*

*"Tennesseans need to have timely access to these important life sustaining supplies from a business licensed by the state of Tennessee." –Letter to CMS Administrator Tavenner*

WASHINGTON, May 21 – Members of the Tennessee United States congressional delegation today called on the administration to provide details on its policy of awarding Medicare contracts to businesses not licensed in Tennessee, a violation of the administration's bid policy and a violation of Tennessee state law.

The members write: "We recently received reports that Medicare awarded DME [Durable Medical Equipment] contracts in Tennessee to suppliers not licensed to serve Medicare beneficiaries in the state. CMS clearly states in the 'Request for Bids,' a document that spells out the rules for suppliers to initially compete, that 'every supplier location is responsible for having all applicable license(s) for each state in which it provides services.' Nonetheless, CMS has awarded contracts to suppliers without a license in Tennessee. Tennessee law requires a physical location in the state as a prerequisite to obtaining a license to provide medical equipment."

Durable medical equipment includes products that are intended for at-home care of sick or injured individuals. The category includes wheelchairs, crutches, blood pressure monitors, and hospital beds. The Tennessee delegation, led in the effort by U.S. Senator Lamar Alexander (R-Tenn.), the Ranking Member of the Senate Health, Education, Labor and Pensions Committee, and U.S. Representative Marsha Blackburn (R-Brentwood), called for the administration to provide a plan of action "to ensure that all Medicare beneficiaries in Tennessee will have robust options to receive DME when they need it and that all companies supplying Medicare beneficiaries in Tennessee will be properly licensed to operate in the state."

The letter is signed by Senators Alexander and Bob Corker (R-Tenn.) and Representatives Blackburn, Phil Roe (R-Johnson City), John J. Duncan, Jr. (R-Knoxville), Chuck Fleischmann (R-Ooltewah), Scott DesJarlais, (R-Jasper), Jim Cooper (D-Nashville), Diane Black (R-Gallatin), and Steve Cohen (D-Memphis).

**The full text of the letter is below:**

Marilyn Tavenner  
Acting Administrator  
Centers for Medicare and Medicaid Services  
U.S. Dept. of Health and Human Services  
200 Independence Avenue, SW  
Washington DC 20201

Dear Acting Administrator Tavenner:

We write today to express our concern about the Centers for Medicare and Medicaid Services (CMS) policy of allowing non-licensed Durable Medical Equipment (DME) providers to win Medicare contracts to supply DME products in Tennessee even though they do not comply with state licensure law. We request your plan of action to ensure all Medicare beneficiaries in Tennessee affected by the DME Competitive Bidding Program will have timely access to physician ordered supplies and necessary services.

Memphis, Knoxville, Chattanooga, and Nashville metropolitan statistical areas are included in the Round 2 expansion of the DME competitive bidding program. We recently received reports that Medicare awarded DME contracts in Tennessee to suppliers not licensed to serve Medicare beneficiaries in the state. CMS clearly states in the "Request for Bids," a document that spells out the rules for suppliers to initially compete, that "every supplier location is responsible for having all applicable license(s) for each state in which it provides services." Nonetheless, CMS has awarded contracts to suppliers without a license in Tennessee. Tennessee law requires a physical location in the state as a prerequisite to obtaining a license to provide medical equipment.

Since these bids came from providers not licensed in Tennessee, their ability to serve Medicare beneficiaries skewed the bidding process and should not have been included, nor should their bid prices have been included to determine median pricing for affected product categories. We are concerned that when this program goes into effect on July 1, 2013, there will not be enough licensed companies contracted by Medicare to supply DME products to Medicare beneficiaries in Tennessee. Tennesseans need to have timely access to these important life sustaining supplies from a business licensed by the state of Tennessee.

We request your plan of action to ensure that all Medicare beneficiaries in Tennessee will have robust options to receive DME when they need it and that all companies supplying Medicare beneficiaries in Tennessee will be properly licensed to operate in the state. Please also include the number of companies that were awarded a contract and were licensed in Tennessee at the time of award, the capacity those companies already licensed will be able to serve on July 1st, the number of unlicensed awardees who have a physical presence in

Tennessee, and the number of unlicensed companies that bid below the median bid price. We request a reply by June 3, 2013. We are happy to furnish additional information or please feel free to have your staff contact Alicia Hennie in Sen. Alexander's office at 224-0623 or Keith Studdard with Rep. Blackburn at 225-3469.

# # #