

## *Report to Contributors*

Since its inception, Last Chance for Patient Choice has spent nearly half a million dollars to fight National Competitive Bidding, both “on the ground” and in the courtrooms.

LCPC’s initial effort was targeted ad campaign opposing competitive bidding, supported by a protest rally. A subsequent national advertising campaign on the negative effects of NCB occurred. Newspaper inserts, radio and television ads were all part of the project, which generated a great deal of positive coverage from various media.

Two lawsuits have been filed, and a third is being considered. Any individual who has been involved in litigation knows that legal bills add up quickly. The first suit, filed in federal court in Dallas in June 2007, has incurred direct costs of \$103,310.33 to date. It alleged that the Medicare Modernization Act, which mandated competitive bidding for HME, was unconstitutional because it denied equal protection to certain classes of people. “We alleged that the economic structure created by MMA would inevitably result in a two-tiered system of care for Medicare patients by forcing some of them into ‘auctions,’ in which the price of the service/product was the determining factor. Others would be left in the traditional system where quality, convenience, access to service and many other factors important to consumers were still considered,” Jim Walsh, general counsel for VGM Group, Inc., says. Part of that suit also included providers’ claims that they were unfairly discriminated against because other providers were not forced into the same system. The Texas suit was dismissed without prejudice – meaning it can be re-filed – because of a lack of “ripeness.” “We were unable to prove that beneficiaries were harmed or providers put out of business yet. Basically, the court said ‘come back when it happens.’ We are considering re-filing now and adding plaintiffs who lost the bid,” says Walsh.

A second federal court action, filed on behalf of an Ohio HME provider, alleges that CMS had failed to follow the Regulatory Burden Act when it enacted regulations relating to the establishment and operation of the competitive bidding process. Direct costs to date are \$82,538.56. “That federal act requires that agencies use the least burdensome regulations after careful investigation of alternatives. Our position is that no careful investigation was done, and the resulting regulatory schema is a disaster for providers, and by extension, Medicare beneficiaries,” explains Walsh. The suit is still pending and he anticipates more plaintiffs will be added following unsuccessful bids.

Last Chance for Patient Choice and VGM Group, Inc., are investigating filing a third lawsuit based on the principle that the competitive bidding process denies HME providers’ constitutional due process. “Our proof would be the huge mess that has resulted from the apparently botched bid review and analysis process by CMS through which many, many providers were apparently denied an opportunity to have their bids considered because of perceived problems with their bid packages,” says Walsh. “In fact, the packages were either adequate in the first place or CMS failed to notify them that their packages lacked key items before the bid window closed. The original bid instructions indicated that would be done.” Currently, LCPC and VGM are working with a Washington, D.C., law firm that is researching constitutional grounds for the legal action. Legal concept development for all three suits, which encompasses everything from reviewing past case law to finding plaintiffs, filing briefs, research and planning, has totaled \$127,021.42. The additional costs to pursue the constitutional claim could approach \$500,000.

Last Chance for Patient Choice has retained a public relations firm to assist with the planning and execution of a national public relations campaign in selected areas. LCPC has committed \$48,000 for the cost of this campaign.

Administrative and operating expenses have totaled \$12,888.94, and fund-raising costs are \$5,741.43, or about 4% of total expenditures to date.

Thanks to all the VGM members, participating manufacturers and industry supporters, without whose generous contributions these efforts would not have been possible.

# LAST CHANCE FOR PATIENT CHOICE

## *Financial Report*

*From Inception through December 31, 2007*

### Receipts

#### Contributions from:

VGM Members	\$316,621.68
US Rehab Members	\$36,245.00
OPGA and Point Members	\$44,086.33
Other friends and supporters of the HME industry	\$15,038.32
Van G. Miller	\$5,000.00
VGM Group, Inc.	<u>\$25,000.00</u>
	\$441,991.33

### Disbursements

Targeted Public Informational Rally and Advertising Campaign against NCB	\$52,369.21
National Advertising of negative effects of National Competitive Bidding	\$27,729.80
NCB Lawsuits - Legal Concept Development and Planning	\$127,021.42
NCB Lawsuit - Texas Lawsuit	\$103,310.33
NCB Lawsuit - Ohio Lawsuit	\$82,538.56
National Competitive Bidding Public Relations Campaign	\$48,000.00
Operating and Administrative Expenses	\$12,888.94
Fundraising	<u>\$5,741.43</u>
	\$459,599.69

**Disbursements in Excess of Receipts** \$(17,608.36)

**Pledges receivable** \$6,582.67

**Temporary funding provided by VGM Group, Inc.** \$11,025.69

**Net Activity - 2005 through 2007** \$0.00

Last Chance for Patient Choice (LCPC) is a 527 not-for-profit organization set up to support the fight against national competitive bidding. Supporters of LCPC believe NCB is bad public policy, bad for Medicare beneficiaries, bad for healthcare and bad for the thousands of businesses and organizations who provide home medical equipment, orthotics and prosthetics to the Medicare beneficiaries.