

United States Senate

WASHINGTON, DC 20510

December 16, 2008

The Honorable Jim Nussle
Director
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Nussle,

On December 5, 2008, the Centers for Medicare and Medicaid Services (CMS) submitted to the Office of Management and Budget (OMB) for approval its interim final rule on the durable medical equipment (DME) competitive bidding program. The rulemaking process is related to the July 15, 2008 enactment of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA).

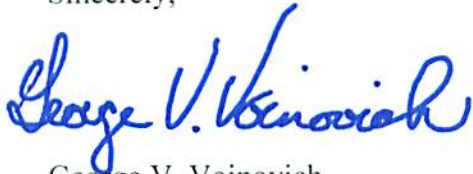
We are deeply concerned that CMS is attempting to rush implementation of this rule, inconsistent with the intent of Congress when MIPPA was passed. Congress enacted the 18-month delay because it believed CMS haste could lead to disastrous results for patients. Because interim final rules automatically go into effect 30 days after being published, they are normally reserved for emergencies where CMS must move quickly for public safety reasons. CMS has not made the case that such an emergency exists here.

In this case, Congress intended that CMS take as much time as necessary in promulgating a new rule to ensure that the program would be successful. Under the circumstances it would be much more appropriate for CMS to publish a proposed rule, ensuring that comments received during the comment period will be taken into account before the final rule is published. Such a process would be consistent with Congress' intent that CMS take the time to get the process right.

Additionally, the homecare community has expressed its interest in working with CMS to review the mechanics of all aspects of the competitive bidding program. However, CMS has not capitalized on the only existing mechanism -- the Program Advisory and Oversight Committee (PAOC) -- to seek or incorporate feedback on aspects of the program. In fact, since MIPPA was passed, CMS disbanded the PAOC, which was created to provide the agency with concrete, real-world guidance on the development and implementation of the program.

We ask that you deny approval of the interim final rule, and that CMS instead take all necessary time to work with all stakeholders and create a proposed rule that will improve the program and provide an opportunity for comments.

Sincerely,



George V. Voinovich
United States Senator



Pat Roberts
United States Senator

cc: The Honorable Kerry Weems
The Honorable Joshua Bolten