

Congress of the United States
Washington, DC 20515

February 2, 2009

The Honorable Charles E. Johnson
Acting Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Acting Secretary Johnson:

We are writing to you regarding an interim final rule that the Centers for Medicare and Medicaid Services (CMS) published last week for the durable medical equipment, prosthetics, orthotics and supplies (DME) competitive bidding program. The rule will take effect on February 27, 2009.

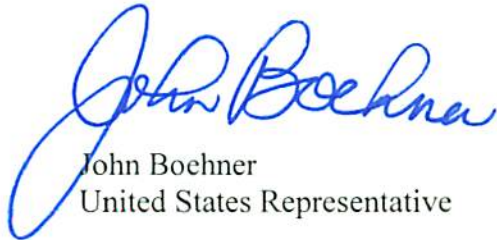
As part of Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), we supported a delay to the competitive bidding program so that certain reforms could be implemented to protect beneficiaries and suppliers before moving forward with the program. Unfortunately, we are concerned that the speed in which the interim final rule was issued runs counter to Congressional intent when it delayed Round One of the DME program. MIPPA specified reforms that must be achieved after Congress received many examples of serious problems the bid program would cause, particularly restricting beneficiaries' access to quality local providers, especially in rural areas.

In the interim final rule, CMS elected not to pursue the traditional notice and comment rulemaking. We remain concerned that many of the recommended changes designed to prevent future access problems and confusion in the competitive bidding program were not incorporated or raised for public comment. Any final rulemaking on this program should provide assurances that any discrepancies between information submitted by bidders and received by CMS will not result in the unfair disqualification of longstanding companies in our home state of Ohio who have offered quality homecare services for decades.


We agree that MIPPA addressed near-term concerns with the program, but thoughtful and deliberate rulemaking by CMS was clearly anticipated by Congress, given the level of Congressional and stakeholder concern during initial implementation. As such, it would be appropriate for CMS to publish a proposed rule, ensuring that comments received during the comment period would be taken into account before any final rule is published. Such a collaborative and transparent process would be consistent with Congress' intent.

We hope you will consider rescinding the interim final rule prior to its effective date and resubmitting a revised version for public comment. We continue to believe that a DME competitive bidding program can be developed and implemented in a way that will best serve the needs of our home care beneficiaries, and we look forward to working with you.

Sincerely,



John Boehner
United States Representative



George V. Voinovich
United States Senator