

# United States Senate

WASHINGTON, DC 20510

July 2, 2008

The Honorable Michael O. Leavitt  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Dear Secretary Leavitt:

We are writing to request that you act immediately to delay the implementation of the first round of the competitive bidding program for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). The administration has the authority to delay the program and we urge you to use this authority to protect seniors and the program from potentially irreversible harm.


Provisions to delay the program for 18 months are included in Medicare legislation that is currently pending before Congress. Identical provisions are in separate Medicare packages supported by Republicans and Democrats in both chambers. Additionally, there is companion freestanding, bipartisan legislation in both the House and Senate that would delay the start of the DMEPOS program to allow for improvements to the bidding process and to strengthen quality standards, broaden accreditation requirements, and require disclosure of subcontractors. With such broad bipartisan support, the 18-month delay of DMEPOS competitive bidding is almost certain to be passed. It is our firm belief that you have the authority to delay the program in a fashion designed to protect seniors and suppliers. We urge you to avoid disruption and confusion for beneficiaries and potentially irreversible harm to suppliers and the overall program by suspending implementation today.

As you know, Section 302 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) established the requirements for the DMEPOS competitive bidding program. The program was to be phased in over several years, beginning in 2007. Initially, the Centers for Medicare and Medicaid Services (CMS) attempted to adhere to its own timeline in its proposed rule where it stated that the prices for the first phase of the program would be implemented in October 2007. Instead, acknowledging the complexity of the new program and its effect on Medicare beneficiaries, CMS delayed on more than one occasion the final rule to implement the program until April 2, 2007. As a result of these delays and the obstacles that the program created, CMS then expected the program to go into effect in April 2008. Once again, the timeline for the implementation was extended until yesterday, July 1, 2008.

As clearly evidenced by these actions, the Administration is not required by statute to implement the DMEPOS program on any particular day. Therefore, by definition, you are well within your discretion to delay the program and prevent the disruption of services that so many seniors rely upon. This kind of action would also be consistent with prior occasions when CMS has intervened and delayed certain policies within Medicare. Similar agency actions to delay implementation of other statutory requirements in similar circumstances have also been upheld by the courts.

We appreciate your dedication to ensuring that our nation's seniors receive the products and services that they need to live longer lives. Thank you in advance for considering this request, and we look forward to hearing from you.

Sincerely,

  
Saxby Chambliss

  
Johnny Isakson

cc: Mr. Kerry Weems, Acting Administrator, Center for Medicare and Medicaid Services