The Honorable Mark McClellan, M.D., Ph.D.
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Dr. McClellan:

We write to express concern over a proposed change in payment policy for the treatment of Medicare dialysis patients. This change, which would pay dialysis centers for separately billable drugs and biologics at three percent below the Average Sales Price (ASP), has the potential to negatively impact small, independent dialysis centers, which are often found in rural areas.

Section 623 of the Medicare Modernization Act (MMA), passed by Congress last year, requires several changes to Medicare ESRD payment, including a provision to pay dialysis centers for separately billable drugs based on acquisition costs, as determined by the HHS Office of the Inspector General (OIG). The OIG reported in May 2004 that the four largest dialysis chains had drug acquisition costs that were six percent lower than ASP for ten of the top separately billable drugs. But independent, freestanding facilities had acquisition costs that were four percent above the ASP. We are concerned that CMS' proposal to pay dialysis centers at ASP minus three percent may have the effect of limiting access to care for patients treated at independent, freestanding facilities.

As you know, in June 2004 the Government Accountability Office (GAO) reported on the state of Medicare dialysis facility payment. The GAO found that while Medicare payments for freestanding dialysis facilities generally exceed providers' costs, small dialysis facilities are having trouble making ends meet. We believe that the proposal by CMS to pay facilities at ASP minus three percent may exacerbate these small providers' already tenuous financial position. Therefore, we respectfully request that you reconsider the policy in the final rule, taking into account the comments of the Medicare Payment Advisory Commission (MedPAC) in order to assure that Medicare payments are appropriate for small, independent facilities to purchase drugs.
We thank you for your attention to this matter. We will closely follow the development of this important Medicare policy in the coming months and look forward to close coordination with CMS before the policy is finalized.

Sincerely,

Chuck Grassley
Max Baucus
Kent Conrad
Rick Santorum
Debbie Stabenow
Jim Jeffords
Blanche Lincoln
John Breaux
Michael Enzi
Jay Rockefeller
Chris Dodd
Harry Reid
Jack Reed
Phil Hare