



News Flash - On September 3, 2008, the Centers for Medicare & Medicaid Services (CMS) announced a list of Durable Medical Equipment Prosthetics/Orthotics, and Supplies (DMEPOS) providers that were exempt from meeting the quality standards for DMEPOS accreditation. CMS would like to clarify that pharmacists and pharmacies were not included in this provider exemption and do need to obtain accreditation. For example, if a pharmacy is providing DMEPOS supplies to Medicare beneficiaries, such as diabetic supplies and enteral/parenteral nutrition, they would need to be accredited by the September 30, 2009 deadline. For more information about DMEPOS Accreditation, please visit the web page at <http://www.cms.hhs.gov/medicareprovidersupenroll/> on the CMS website.

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Changes in Medicare Payment for Oxygen and Oxygen Equipment

Provider Types Affected

Providers and suppliers submitting claims to Durable Medical Equipment Medicare Administrative Contractors (DME MACs) and/or Regional Home Health Intermediaries (RHHIs) for oxygen and oxygen equipment provided to Medicare beneficiaries.

Provider Action Needed

This article alerts suppliers and providers that the Centers for Medicare & Medicaid Services (CMS) is implementing new oxygen payment rules and supplier responsibilities as a result of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) in the Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2009 as displayed in the Federal Register on October 30, 2008. These changes are effective for services provided on or after January 1, 2009. Be sure billing staff are aware of these changes.

Disclaimer

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents.

Background

CMS is making these changes to comply with the new MIPPA requirements for oxygen and oxygen equipment while safeguarding beneficiaries who rely on life sustaining oxygen services. This Special Edition article supplements the information provided in *MLN Matters 6296* and *6297* (or *MM6296* and *MM6297*) which, when issued, outline instructions regarding repair, maintenance and servicing of oxygen equipment, and other changes resulting from implementation of section 144(b) of MIPPA. Once issued, *MM6296* may be reviewed at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM6296.pdf> on the CMS website. Once issued, *MM6297* may be reviewed at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM6297.pdf> on the CMS website.

Key Points

Payment and Billing Issues

- Oxygen and oxygen equipment are paid on a fee schedule basis. The beneficiary pays coinsurance and deductibles.
- The oxygen rental payment covers the equipment, contents, maintenance, and supplies and accessories such as tubing or a mouthpiece, and other services necessary for furnishing oxygen and oxygen equipment.
- The Deficit Reduction Act of 2005 (DRA) limited monthly payments for oxygen and oxygen equipment to 36 months of continuous use after which the equipment title transferred to the beneficiary. Section 144(b) of the MIPPA **repeals the transfer of ownership provision and permits suppliers to retain ownership of the oxygen equipment following the 36-month rental cap.**
- Section 414.226(g)(1) of CMS regulations requires the supplier who furnished the oxygen equipment in the first month to continue furnishing the oxygen equipment for the entire 36 month period with certain exceptions such as when the beneficiary relocates outside the service area, when the beneficiary elects to obtain oxygen equipment from another supplier, or in certain cases granted by the carrier/DME MAC or CMS such as emergency situations.
- Section 414.226(g)(2) of the regulations prevent suppliers from switching oxygen equipment modalities during the 36 month period (e.g., from liquid oxygen to a concentrator). There are special exceptions to this rule in the event the physician orders different equipment based on medical necessity or where the beneficiary chooses newer technology and signs an Advance Beneficiary Notice (ABN) acknowledging potential financial liability for the newer technology.

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- Section 414.226(g)(1) also requires the supplier to disclose its intentions for accepting assignment of claims during the 36 month rental period.
- **Be aware that after the 36 month cap the following requirements apply:**
 - The supplier is required to continue furnishing the equipment, supplies and accessories for any period of medical need for the remainder of the reasonable useful lifetime of the equipment. This requirement includes use of equipment following temporary breaks of in-home oxygen services (e.g., due to a hospital or other facility stay) of any duration after the 36-month rental cap.
 - The supplier who furnished the liquid or gaseous oxygen equipment during the 36-month rental period is responsible for furnishing the oxygen contents used with the supplier-owned oxygen equipment for any period of medical need following the 36-month rental cap for the remainder of the reasonable useful lifetime of the equipment. Medicare will pay for oxygen contents for any gaseous or liquid oxygen equipment. Suppliers should continue to use HCPCS codes **E0441** through **E0444** in order to bill and receive payment for furnishing oxygen contents. Medicare can pay for a general maintenance-and-servicing visit for concentrators or transfilling equipment in 2009, which must take place 6 months after the end of the 36-month rental period.
 - Other than this general maintenance and servicing payment, payment is not allowable for any repair or maintenance and servicing of supplier-owned oxygen equipment, including any replacement part furnished as part of any repair or maintenance and servicing of oxygen equipment.
 - The supplier is responsible for furnishing all of the same items **and services** after the 36-month rental period as they furnished during the 36-month rental period. With the exception of oxygen contents and the general maintenance and servicing visit in 2009, the supplier must furnish these items and services without charging Medicare or the beneficiary.
 - Payment is not allowable for supplier pickup or disposal of oxygen tanks or cylinders that are no longer needed.

Beneficiary Relocation Issues

- If the beneficiary relocates before the end of the 36-month rental period, he/she should work with his or her supplier to make arrangements to continue receiving oxygen and oxygen equipment from a new supplier at his or her new place of residence.

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- If the beneficiary relocates after the 36-month rental period, the supplier is required to continue furnishing oxygen and oxygen equipment, and therefore, must make arrangements for the beneficiary to continue receiving oxygen services at his or her new place of residence.

Take Note: Suppliers that are found to be out of compliance with existing regulations and these new requirements are subject to significant administrative remedies, including removal of billing privileges.

Beneficiary Issues of Importance to Providers

- Beneficiaries are entitled to change suppliers at any time during their period of medical need. **A word of caution, finding new suppliers after the 36 month cap may be difficult because the new supplier would receive no monthly payments except for maybe the maintenance and servicing visit.**
- If beneficiaries choose to purchase their own oxygen equipment instead of renting, they need to understand that **Medicare does not pay a lump-sum purchase for oxygen equipment.** Medicare pays on a rental basis up to a 36-month rental period.

Additional Information

If you have questions, please contact your Medicare DME MAC or RHHI at their toll-free number which may be found at

<http://www.cms.hhs.gov/MLNProducts/downloads/CallCenterTollNumDirectory.zip> on the CMS website.

Questions and answers regarding changes in payment for oxygen and oxygen equipment are posted at http://questions.medicare.gov/cgi-bin/medicare.cfg/php/enduser/std_alp.php?p_sid=AUyrW7ij&p_lva=&p_li=&p_accessibility=0&p_redirect=&p_page=1&p_cv=1.33&p_pv=&p_prods=&p_cats=33&p_hidden_prods=&cat_lv1=33 on the Internet.

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