CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-20 One-Time Notification	Centers for Medicare & Medicaid Services (CMS)
Transmittal 421	**Date: DECEMBER 23, 2008**
	Change Request 6297

SUBJECT: Changes in Payment for Oxygen Equipment as a Result of the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008 and Additional Instructions Regarding Payment for DMEPOS

I. SUMMARY OF CHANGES: The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) was enacted on July 15, 2008. Section 144(b) of the MIPPA repeals the transfer of ownership provision established by the Deficit Reduction Act of 2005 for oxygen equipment and establishes new payment rules and supplier responsibilities following the 36 month payment cap. This transmittal provides specific instructions regarding the changes resulting from section 144(b) of MIPPA.

NEW / REVISED MATERIAL
EFFECTIVE DATE: *January 1, 2009
IMPLEMENTATION DATE: January 6, 2009

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)
R=REVISED, N=NEW, D=DELETED-*Only One Per Row.*

R/N/D	Chapter / Section / Subsection / Title
N/A	

III. FUNDING:
SECTION A: For Fiscal Intermediaries and Carriers:
No additional funding will be provided by CMS; Contractor activities are to be carried out within their operating budgets.

SECTION B: For Medicare Administrative Contractors (MACs):
The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:
One-Time Notification

**Unless otherwise specified, the effective date is the date of service.*

Attachment – One-Time Notification

Pub. 100-20	Transmittal: 421	Date: December 23, 2008	Change Request: 6297

SUBJECT: Changes in Payment for Oxygen and Oxygen Equipment as a Result of the MIPPA of 2008 and Additional Instructions Regarding Payment for DMEPOS

EFFECTIVE DATE: January 1, 2009

IMPLEMENTATION DATE: January 6, 2008

I. GENERAL INFORMATION

A. Background:

Oxygen and oxygen equipment are paid on a fee schedule basis in accordance with section 1834(a)(5) of the Social Security Act. 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. As part of the DRA rulemaking effort, CMS established beneficiary safeguards to ensure that suppliers would continue to maintain and service beneficiary-owned oxygen equipment after the 36 month cap. The safeguards included payment for periodic (every 6 months) general maintenance and servicing of beneficiary-owned oxygen equipment, payment for pickup of beneficiary-owned oxygen tanks that are no longer needed, and rules for furnishing or replacing oxygen equipment during the 36 month payment period.

The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) was enacted on July 15, 2008. Section 144(b) of the MIPPA repeals the transfer of ownership provision established by the DRA for oxygen equipment and establishes new payment rules and supplier responsibilities after the 36 month payment cap. This one-time update provides guidance on the changes in payment for oxygen and oxygen equipment resulting from section 144(b) of the MIPPA. This transmittal also contains additional claims processing and payment instructions for DMEPOS. Specific instructions related to the implementation of these changes will be issued in a separate April 2009 CR (CR 6296).

B. Policy:

Payment Policies for Oxygen and Oxygen Equipment and Capped Rental DME Following the Enactment of the Medicare Improvements for Patients and Providers Act of 2008 (in JSM/TDL-08447)

Section 154 of the MIPPA delays the Durable Medical Equipment Prosthetic, Orthotics & Supplies (DMEPOS) Competitive Bidding Program and terminates all Round I supplier contracts. Therefore, in the 10 areas where competitive bidding was initiated, Medicare will resume paying for DMEPOS items, retroactive to June 30, 2008, in accordance with the standard payment rules and fee schedule amounts. As a result, Medicare will pay no more than 13 continuous rental months for capped rental items and 36 continuous monthly payment amounts for oxygen and oxygen equipment. The competitive bidding policy that would have provided an additional 13 months of rental payments in situations where beneficiaries transitioned from non-contract suppliers to contract suppliers in the middle of the 13 month rental period for capped rental items is no longer valid. Therefore, for capped rental items, the supplier who received payment for the 13th continuous rental month must transfer title of the equipment to the beneficiary. Similarly, the competitive bidding policy that would have provided a minimum of 10 monthly payments to contract suppliers in situations where beneficiaries transitioned from non-contract suppliers to contract suppliers in the middle of the 36 month rental period for oxygen and oxygen equipment is no longer valid. Therefore, for oxygen and oxygen equipment, the supplier who receives payment for the 36th continuous rental month must continue to furnish the oxygen and oxygen equipment until the reasonable useful lifetime of the oxygen equipment expires.

Beneficiaries residing in the 10 competitive bidding areas for Round I may obtain oxygen and oxygen equipment and capped rental items and supplies from any Medicare-enrolled supplier and are not required to return to the supplier they were using before July 1, 2008.

New HCPCS Modifiers for Repair and Replacement

To clearly distinguish between the repair and replacement of an item, the following two modifiers are being added to the HCPCS on January 1, 2009, and are effective for claims with dates of service on or after January 1, 2009:

RA – Replacement of a DME item
RB – Replacement of a part of DME furnished as part of a repair

The existing RP modifier (*Replacement and Repair – RP may be used to indicate replacement of DME, orthotic and prosthetic devices which have been in use for sometime. The claim shows the code for the part, followed by the 'RP' modifier and the charge for the part)* will be deleted from the HCPCS, effective 12/31/08. Suppliers should use the new RA modifier on DMEPOS claims to denote instances where an item is furnished as a replacement for the same item which has been lost, stolen or irreparably damaged. In contrast, the new RB modifier should be used on a DMEPOS claim to indicate replacement parts of a DMEPOS item (base equipment/device) furnished as part of the service of repairing the DMEPOS item (base equipment/device).

Additional Instructions for Implementation of MIPPA 144(b) – Oxygen Equipment

Section 144(b) of the MIPPA eliminates the requirement for suppliers to transfer title to oxygen equipment to the beneficiary following the 36th continuous month during which payment is made for the equipment. The requirement for suppliers to transfer title to the beneficiary for capped rental equipment following the 13th continuous month during which payment is made for the equipment remains in effect. As noted above, section 144(b) of MIPPA repealed the Deficit Reduction Act (DRA) transfer of title provision for oxygen equipment and allows suppliers to retain ownership of the oxygen equipment following the 36-month rental cap. This section of MIPPA requires that the supplier who furnished the stationary and/or portable oxygen equipment during the 36-month rental period continue to furnish the stationary and/or portable equipment following the 36-month rental period for any period of medical need for the remainder of the equipment's reasonable useful lifetime. Therefore, the supplier who receives payment for furnishing the equipment during the 36th month of continuous use is responsible for furnishing the oxygen equipment at any time after the 36 month rental period and before the expiration of the reasonable useful lifetime of the oxygen equipment if the beneficiary has a medical need for oxygen and oxygen equipment furnished under Medicare Part B. This requirement includes situations where there is a temporary break in need or break in use of the equipment of any duration after the 36-month rental cap. In such situations, the supplier remains responsible for furnishing the oxygen equipment after the break in need for the remainder of the reasonable useful lifetime during which the medical need for oxygen and oxygen equipment continues. Following the 36-month cap, the supplier is responsible for furnishing all of the same necessary services associated with furnishing oxygen equipment that were furnished during the 36-month rental period. For example, as required by the Medicare quality standards for respiratory equipment, supplies, and services established in accordance with 1834(a)(20) of the Social Security Act, the supplier shall provide services 24 hours a day, 7 days a week as needed by the beneficiary. Suppliers may not bill beneficiaries separately for these services. Medicare oxygen equipment rental payments continue to be limited to 36 months and under no circumstances will a new rental period start following the completion of the 36-month rental period unless the equipment is replaced because it is lost, stolen, irreparably damaged, or is replaced after the reasonable useful lifetime expires.

As indicated in section 30.6 of Chapter 20 of the Medicare Claims Processing Manual (Pub. 100-04), the monthly payment amount for oxygen and oxygen equipment covers equipment, contents, supplies and accessories. Section 144(b) of MIPPA caps the all inclusive oxygen and oxygen equipment monthly payments at 36 months and does not provide for payment of replacement oxygen supplies and accessories following the

36-month cap. The supplier who received payment for furnishing the oxygen and oxygen equipment during the 36-month rental period is responsible for continuing to furnish any accessories and supplies necessary for the effective use of the equipment for any period of medical need following the 36-month rental cap for the remainder of the reasonable useful lifetime of the equipment. Therefore, separate payment shall not be made for replacement of supplies and accessories for use with oxygen equipment that are furnished on or after January 1, 2009. This applies to any supply or accessory billed under a miscellaneous HCPCS code, any codes added to the HCPCS in the future, or under the following current HCPCS codes:

A4608 Transtracheal oxygen catheter, each
A4615 Cannula, nasal
A4616 Tubing (oxygen), per foot
A4617 Mouth piece
A4619 Face tent
A4620 Variable concentration mask
A7525 Tracheostomy mask, each
E0555 Humidifier, durable, glass or autoclavable plastic bottle type, for use with regulator or flowmeter
E0560 Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery
E0580 Nebulizer, durable, glass or autoclavable plastic, bottle type, for use with regulator or flowmeter
E1353 Regulator
E1354 Wheeled cart for portable cylinder or concentrator (Added to HCPCS effective January 1, 2009)
E1355 Stand/Rack
E1356 Battery pack/cartridge for portable concentrator (Added to HCPCS effective January 1, 2009)
E1357 Battery charger for portable concentrator (Added to HCPCS effective January 1, 2009)
E1358 DC Power adapter for portable concentrator (Added to HCPCS effective January 1, 2009)

Instructions regarding claims for oxygen accessory or supply codes will be provided in a separate transmittal/change request (CR 6296) that will be issued as part of the April 2009 release.

Additional Instructions for Implementation of MIPPA 144(b) – Oxygen Contents

Section 144(b) of MIPPA also mandates that Medicare payment for oxygen contents used with liquid or gaseous oxygen equipment (stationary or portable) continue 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. In addition, monthly payment for oxygen contents for beneficiary-owned liquid or gaseous oxygen equipment (stationary or portable) shall continue to be made in accordance with existing program instructions in section 30.6.3 of Chapter 20 of the Medicare Claims Processing Manual (Pub. 100-04). Suppliers shall continue to use HCPCS codes E0441 through E0444 in order to bill and receive payment for furnishing oxygen contents. Separate payment shall not be made under any circumstances for the pick up and disposal of liquid or gaseous oxygen equipment (i.e., tanks). Instructions regarding claims for oxygen contents will be provided in a separate transmittal/change request (CR 6296) that will be issued as part of the April 2009 release.

Additional Instructions for Implementation of MIPPA 144(b) – Maintenance and Servicing of Oxygen Equipment

Section 144(b) of MIPPA mandates payment for reasonable and necessary maintenance and servicing of oxygen equipment furnished after the 36-month rental cap. The 36-month cap applies to stationary and portable oxygen equipment furnished on or after January 1, 2006; therefore, the 36-month cap may end as early as January 1, 2009, for beneficiaries using oxygen equipment on a continuous basis since January 1, 2006. CMS has determined that under no circumstances would it be reasonable and necessary to pay for any maintenance and servicing or repair of oxygen equipment, with the exception of in-home visits by suppliers to inspect certain oxygen equipment and provide general maintenance and servicing 6 months after the 36-month rental cap.

Additional claims processing and payment instructions regarding these maintenance and servicing visits will be furnished in a separate CR as part of the April 2009 release.

In the case of all oxygen equipment furnished after the 36-month rental cap, the supplier is responsible for performing any repairs or maintenance and servicing of the equipment that is necessary to ensure that the equipment is in good working order for the remainder of the reasonable useful lifetime of the equipment. This includes parts that must be replaced in order for the supplier-owned equipment to continue to function appropriately. Payment shall not be made for any repairs or maintenance and servicing, other than the maintenance and servicing payments described above. In no case shall payment be made for any replacement part furnished as part of any repair or maintenance and servicing of oxygen equipment. In addition, payment shall not be made for loaner equipment furnished during periods when these repairs or maintenance and servicing services are performed. Instructions regarding claims for repair or maintenance and servicing of oxygen equipment will be provided in a separate transmittal/change request (CR 6296) that will be issued as part of the April 2009 release.

Revisions to the Labor Payment Rates Associated with Repairing DMEPOS Items

As part of this update, we are revising the labor payment rates for HCPCS code(s) E1340, L4205, and L7520. The current rates were established based on historic supplier charges; however, annual inflation adjustments were not applied consistently from state to state. In addition, the rates differ dramatically among the states in the continental United States (e.g., from $9.51 to $23.53 in the case of E1340). To reduce this span and correct the disparity in payments for codes E1340, L4205, and L7520, we are revising the fees to apply inflation updates in years where we determined that these updates were not provided. Secondly, state payment amounts below the median state payment amount are being increased to the median state payment amount for each code. These changes are effective for claims with dates of service on or after January 1, 2009. Attachment A contains the revised 2009 payment amounts for HCPCS codes E1340, L4205, and L7520. The payment rates include all costs (other than replacement of parts) associated with repairing DMEPOS items. Suppliers should only bill in 15 minutes for the time spent repairing the item and cannot bill for the time spent traveling to the beneficiary's home. The rates established for codes E1340, L4205, and L7520 are based on 25 percent (¼) of the previous hourly repair rates for codes E1350, L4200, and L7500, respectively. The supplier's travel costs are assumed to have been taken into account by suppliers in setting the prices they charged for these services under these codes. As such, these costs have already been accounted for in the calculation of the rates for codes E1340, L4205, and L7520. Therefore, separate payment shall not be made for travel costs associated with repairing DMEPOS items. In addition, suppliers may not bill beneficiaries directly for travel charges.

Payment for Capped Rental Equipment following the Enactment of MIPPA

As noted above, MIPPA of 2008 did not eliminate or amend the provisions of the DRA of 2005 that apply to capped rental DME. All previously issued program instructions relating to these provisions remain in effect, including the requirement for suppliers to transfer title of the equipment on the first day after the 13th continuous month of use during which payment is made for the equipment.

MIPPA Remittance Advice (RA) messages

Although Section 144(b) of the MIPAA takes effect on January 1, 2009, the new Remittance Advice (RA) and Medicare Summary Notice (MSN) messages associated with this provision are not yet available. Therefore, in the interim, for claims with dates of service of January 1, 2009 and later, the following non-specific RA message will be used when paying the 36th month oxygen equipment claim:

Reason Code 223: Adjustment code for mandated federal, state or local law/legislation that is not already covered by another code and is mandated before a new code can be created.

Additional instructions related to the implementation of this provision of the MIPPA will be provided in the near future.

Medicare Coverage of Elastic Support Garments

We have received questions regarding coverage of elastic support garments as leg, arm, back, or neck braces (orthotics). The definition of a brace in section 130 of Chapter 15 of the Medicare Benefit Policy Manual (Pub. 100-02) specifies that:

> A brace includes rigid and semi-rigid devices which are used for the purpose of supporting a weak or deformed body member or restricting or eliminating motion in a diseased or injured part of the body. Elastic stockings, garter belts, and similar devices do not come within the scope of the definition of a brace.

Elastic garments or devices in general do not meet the definition of a brace because they are not rigid or semi-rigid devices. This includes devices that include stays that do not provide sufficient pressure to restrict or eliminate motion in the body part. While elastic devices may provide compression or warmth to a leg, arm, back, or neck, if they do not restrict or eliminate motion in a diseased or injured part of the body, then they may not be covered as braces. When a contractor identifies an elastic device that does not meet the Medicare definition of a brace, they shall not cover claims submitted for these devices and they shall not classify such devices under a HCPCS code that describes items that do meet the Medicare definition of a brace.

II. BUSINESS REQUIREMENTS TABLE

Use"Shall" to denote a mandatory requirement

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A/B MAC	DME MAC	FI	CARRIER	RHHI	Shared-System Maintainers				OTHER
							FISS	MCS	VMS	CWF	
6297.1	Contractors shall accept modifier "RA" rather than "RP" for replacement of beneficiary-owned DMEPOS due to loss, irreparable damage, or when the item has been stolen.	X	X	X	X	X					
6297.2	Contractors shall accept modifier "RB" rather than "RP" for replacement parts furnished in order to repair beneficiary-owned DMEPOS.	X	X	X	X	X					
6297.3	Contractors shall use the 2009 allowed payment amounts for code E1340 in Attachment A to pay claims for the labor associated with reasonable and necessary repairs of beneficiary-owned DME with dates of service from January 1, 2009 through December 31, 2009.	X	X		X	X					
6297.4	Contractors shall use the 2009 allowed payment amounts for codes L4205 and L7520 in Attachment A to pay claims for the labor associated with reasonable and necessary repairs of beneficiary-owned orthotics, prosthetics, and prosthetic devices with dates of service from January 1, 2009 through December 31, 2009.	X	X	X	X						
6297.5	Contractors shall be aware that elastic garments or devices such as leg, arm, back, or neck braces that do not restrict or eliminate motion in a diseased or injured part	X	X	X							

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A/B MAC	DME MAC	FI	CARRIER	RHHI	Shared-System Maintainers				OTHER
							FISS	MCS	VMS	CWF	
	of the body do not meet the definition of the orthotic benefit category.										
6297.6	Contractors shall not classify elastic garments or devices that do not restrict or eliminate motion in a diseased or injured part of the body under a HCPCS code that describes items that meet the Medicare definition of a brace.	X	X	X							
6297.7	Contractors need not search their files to either retract payment for claims already paid or to retroactively pay claims with dates of service on or after January 1, 2009 and before the CR's implementation date. However, contractors shall adjust claims brought to their attention with dates of service on or after January 1, 2009 and before the CR's implementation date.	X	X	X	X	X					

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A/B MAC	DME MAC	FI	CARRIER	RHHI	Shared-System Maintainers				OTHER
							FISS	MCS	VMS	CWF	
6297.8	A provider education article related to this instruction will be available at http://www.cms.hhs.gov/MLNMattersArticles/ shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv. Contactors shall post this article, or a direct link to this article on their Web site and include information about it in a listserv message within one week of the availability of the provider education article. In addition, the provider education article shall be included in your next regularly scheduled bulletin. Contractors are free to supplement MLN Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.	X	X	X	X	X					

IV. SUPPORTING INFORMATION

Section A: For any recommendations and supporting information associated with listed requirements, use the box below:

Use "Should" to denote a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:
6297.2	The requirement in this instruction supersedes the requirement in CR 5461.5

Section B: For all other recommendations and supporting information, use this space: N/A

V. CONTACTS

Pre-Implementation Contact(s): Karen Jacobs (410)786-2173, Anita Greenberg (410)786-4601, and Chris Molling (410)786-6399

Post-Implementation Contact(s): Karen Jacobs (410)786-2173, Anita Greenberg (410)786-4601, and Chris Molling (410)786-6399

VI. FUNDING

Section A: For *Fiscal Intermediaries (FIs), Regional Home Health Intermediaries (RHHIs),* and/or *Carriers,* use only one of the following statements:

No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

Section B: *For Medicare Administrative Contractors (MACs)*, include the following statement:

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

ATTACHMENT - 2009 Repair and Service Fees, 15 minute unit

ATTACHMENT

2009 Repair and Service Fees, 15 minute unit

STATE	E1340	L4205	L7520		STATE	E1340	L4205	L7520
AK	23.59	28.79	33.88		SC	13.41	19.99	27.14
AL	24.71	19.99	27.14		SD	13.41	19.97	36.28
AR	24.71	19.99	27.14		TN	13.41	19.99	27.14
AZ	22.40	19.97	33.39		TX	13.41	19.99	27.14
CA	22.40	32.83	38.26		UT	13.41	19.97	42.27
CO	22.40	19.99	27.14		VA	13.41	19.97	27.14
CT	19.95	20.45	27.14		VI	13.41	19.99	27.14
DC	19.95	19.97	27.14		VT	13.41	19.97	27.14
DE	19.22	19.97	27.14		WA	13.41	29.30	34.80
FL	17.46	19.99	27.14		WI	13.41	19.97	27.14
GA	18.10	19.99	27.14		WV	13.41	19.97	27.14
HI	15.61	28.79	33.88		WY	13.41	26.65	37.84
IA	15.49	19.97	32.49					
ID	15.49	19.97	27.14					
IL	13.41	19.97	27.14					
IN	13.41	19.97	27.14					
KS	13.41	19.97	33.88					
KY	13.41	25.60	34.71					
LA	13.41	19.99	27.14					
MA	15.32	19.97	27.14					
MD	13.41	19.97	27.14					
ME	13.41	19.97	27.14					
MI	13.41	19.97	27.14					
MN	13.41	19.97	27.14					
MO	13.41	19.97	27.14					
MS	13.41	19.99	27.14					
MT	13.41	19.97	33.88					
NC	13.41	19.99	27.14					
ND	13.41	28.73	33.88					
NE	13.41	19.97	37.84					
NH	13.41	19.97	27.14					
NJ	15.99	19.97	27.14					
NM	14.00	19.99	27.14					
NV	14.40	19.97	36.99					
NY	14.40	19.99	27.14					
OH	14.40	19.97	27.14					
OK	13.41	19.99	27.14					
OR	13.41	19.97	39.03					
PA	13.41	20.56	27.14					
PR	13.41	19.99	27.14					
RI	13.41	20.58	27.14					