



November 3, 2006
**CMS Posts Final Rule Implementing DRA Oxygen and Capped
Rental Provisions**

**New Medicare Payment Rules for Home Oxygen Therapy
Effective January 1, 2007**

Introduction

The Centers for Medicare & Medicaid Services (CMS) posted November 1, 2006 the final rule to implement the oxygen and capped rental provisions of the Deficit Reduction Act of 2005 (DRA). The rule will be published in the November 9, 2006 *Federal Register*, and is effective for dates of service on or after January 1, 2007.

The final rule related to oxygen is structurally the same as the August 3, 2006 proposed rule. CMS is using its statutory authority provided by BBA 1997 to establish separate payment classes and monthly payments for: portable oxygen contents delivery; stationary oxygen contents delivery; and new, alternative oxygen equipment technologies that meet the patient's oxygen needs without delivery of oxygen contents, described by CMS as "portable oxygen generating systems" This term includes Invacare's HomeFill system as well as portable concentrators.

To view the regulation (CMS-1304-F), go to the CMS website:

<http://www.cms.hhs.gov/HomeHealthPPS/downloads/CMS1304Fdisplay.pdf>

Summary of Final Rule's Oxygen Provisions

Effective January 1, 2006, the DRA provisions require Medicare monthly payment for oxygen equipment to be capped at 36 months. Title of oxygen equipment, (including the HomeFill compressor will transfer from the supplier to the beneficiary at 36 months.

The final rule clarifies Medicare payment for oxygen equipment regarding payment levels for different classes of oxygen technology, number of rental months, maintenance and servicing, payment for oxygen contents, replacements and oxygen supplies and accessories. In addition, CMS is finalizing additional supplier requirements to safeguard beneficiaries. The new oxygen payment rule is effective for services provided on or after January 1, 2007, but for purposes of counting towards the 36-month cap, January 1, 2006 is the earliest month for beneficiaries that have been on home oxygen during 2006.



Oxygen Classes and Payment Rates

CMS is establishing a new class and monthly payment amount for new technology such as portable oxygen transfilling equipment and portable oxygen concentrators. A higher portable add-on payment will be allowed for these systems that eliminate the need for delivery and refilling of oxygen contents for portable systems. CMS is establishing two separate classes and monthly payment amounts for stationary oxygen contents and portable oxygen contents that need be delivered for beneficiary owned liquid or gaseous oxygen equipment.

CMS is using its authority established by the Balanced Budget Act of 1997 to create the separate classes; this authority requires payment changes to be budget neutral. To achieve budget neutrality, CMS is modifying payment rates based upon the specific class of oxygen provided. CMS will monitor new technology utilization. Therefore, CMS will modify on an annual basis the respective payment rates for different oxygen technologies, or classes. Budget neutrality requires that Medicare’s total spending for all modalities of oxygen equipment, including contents, be the same under the proposed change as it would be without these payment changes.

Following are the CMS new oxygen equipment classes and 2007 payment amounts:

Oxygen Equipment Category or “Class”	2007 Payment for Equipment Rental and Contents (Months 1-36)	2007 Delivery/Contents Payment for Beneficiary Owned Equipment After 36 months (per month)
Concentrator and (liquid or gaseous) portable tanks	\$230.19 (\$198.40 for concentrator, plus \$31.79 add on for portable)	\$77.45
Concentrator and/or oxygen generating portable equipment, such as Homefill II	\$250.03 (\$198.40 for concentrator, plus \$51.63 add on for oxygen generating equipment)	\$0
Liquid or gas stationary equipment and liquid or gas portable equipment	\$230.19 (\$198.40 for stationary, plus \$31.79 portable add on)	\$154.90
Concentrator only	\$198.40	\$0

Maintenance and Service Payments; Replacement – Oxygen

Maintenance and Service: CMS will continue its policy of paying for “reasonable and necessary” maintenance and service to beneficiary owned equipment. That is, reasonable and necessary maintenance of beneficiary owned oxygen equipment, which must be performed by authorized technicians would be covered. Medicare will pay for replacement parts of beneficiary-owned equipment, based upon current carrier policy. Maintenance and service that is considered routine will not be covered. CMS will continue its policy of paying for loaner



equipment while a beneficiary's equipment is being repaired, for beneficiary owned oxygen equipment.

Under the final rule, payment for maintenance and servicing of beneficiary owned equipment (unless covered by a supplier's or manufacturer's warranty) will be based on the same method currently used for other beneficiary owned DME. Payment is currently made for parts and labor based on payment amounts established by the carriers. Beginning six months after ownership transfers to the beneficiary, Medicare will make regular payments every six months for general maintenance and service. Payment for each of these general maintenance calls would be limited to 30 minutes of labor, plus the reasonable cost for any replacement parts. Finally, Medicare will make one payment for pick-up and storage or disposal of liquid and gas equipment in the case when a beneficiary no longer medically needs it.

Supplier Replacement of Beneficiary-Owned Equipment Based on Accumulated Repair Costs: Medicare will continue its policy of paying for the replacement of beneficiary-owned items after the equipment's useful life has expired (five years), and for replacement supplies and accessories used with the DME, such as cannulas used with oxygen concentrators. Medicare will also pay for replacement of beneficiary-owned items when the item is lost, stolen, or irreparably damaged. For items that need replacement prior to the expiration of the five year useful life, in cases where replacement is not covered by a warranty, the supplier will be responsible for furnishing replacement equipment (at no cost to the beneficiary or the Medicare Program) if the accumulated costs of repair exceed 60% of the replacement cost. The carrier will have discretion to make the decision regarding whether Medicare will pay repair costs or the supplier will be responsible for furnishing a replacement item.

Separate lump sum payment for replacement of supplies and accessories (e.g. cannulas, tubing) will continue after ownership of the equipment transfers to the beneficiary.

Summary of Beneficiary Safeguards Applicable to Oxygen

A supplier who furnishes rented oxygen equipment to the beneficiary must continue to furnish that item throughout the beneficiary's entire length of medical need or through the 36-month cap (for rentals that begin on or after January 1, 2007), except in limited circumstances: the item becomes subject to a competitive acquisition program; a beneficiary relocates on either a temporary or permanent basis to an area that is outside the normal service area of the initial supplier; the beneficiary chooses to obtain equipment from a different supplier; or other cases in which CMS or the carrier determine that an exception is warranted.

With certain exceptions, for rentals that begin on or after January 1, 2007, the supplier may not switch out equipment at any time during the 36-month rental period unless (a) the item was lost, stolen, irreparably damaged, being repaired or no longer functions, (b) physician orders a different equipment or (c) beneficiary chooses to obtain a newer technology or upgraded item and signs an advanced beneficiary notice acknowledging his or her liability. In all cases, suppliers must replace the equipment with an equipment of the same or better value.



For rentals beginning or after January 1, 2007, CMS is requiring the supplier to disclose to the beneficiary its intentions regarding assignment of all potential monthly rental claims for oxygen equipment. CMS will post this information on a CMS or CMS contractor website(s) indicating (1) the percentage of beneficiaries for which a supplier accepts assignment and (2) the percentage of cases which the supplier accepted assignment during the beneficiary's entire rental period.

At least two months prior to ownership transfer of oxygen, suppliers will be required to notify beneficiaries of whether they will be able to service the equipment after ownership transfers to the beneficiary. Suppliers will be required to inform beneficiaries whether the supplier will be able to deliver oxygen contents after title transfers to the beneficiary. This requirement is effective for rentals beginning on or after January 1, 2007.

In cases where a beneficiary moves, either temporarily or permanently outside the initial supplier's service area, CMS will allow another supplier to be arranged to furnish the oxygen equipment on either a temporary or permanent basis.

Summary of Final Rule's Capped Rental Provisions

For capped rental items, Medicare monthly payments cap after 13 continuous months. Title of capped rental items will transfer from the supplier to the beneficiary at 13 months.

Maintenance and Service Payments; Replacement – Capped Rental Items

Maintenance and Service: Under the final rule, payment for maintenance and servicing of beneficiary owned equipment (unless covered by a supplier's or manufacturer's warranty) will be based on the same method currently used for other beneficiary owned DME. Payment is currently made for parts and labor established based on payment amounts established by the carriers.

Supplier Replacement of Beneficiary-Owned Equipment Based on Accumulated Repair Costs: Medicare will continue its policy of paying for the replacement of beneficiary-owned items after the equipment's useful life has expired (five years), and for replacement supplies and accessories used with the DME, such as masks and tubing used with CPAPs. Medicare will also pay for replacement of beneficiary-owned items when the item is lost, stolen, or irreparably damaged. For items that need replacement prior to the expiration of the five year useful life, in cases where replacement is not covered by a warranty, the supplier will be responsible for furnishing replacement equipment (at no cost to the beneficiary or the Medicare Program) if the accumulated costs of repair exceed 60% of the replacement cost. The carrier will have discretion to make the decision regarding whether Medicare will pay repair costs or the supplier will be responsible for furnishing a replacement item.



Loaner Policy: CMS will continue its policy of paying for “reasonable and necessary” maintenance and service to beneficiary owned equipment. That is, Medicare will pay for parts and labor not otherwise covered under a supplier’s or manufacturer’s warranty. CMS will continue its policy of paying for loaner equipment while a beneficiary’s equipment is being repaired, for beneficiary owned capped rental items.

Summary of Beneficiary Safeguards Applicable to Capped Rental Items

A supplier who furnishes capped rental items to the beneficiary must continue to furnish that item throughout the beneficiary’s entire length of medical need or through the 13-month cap, except in limited circumstances (for rentals beginning on or after January 1, 2007): the item becomes subject to a competitive acquisition program; a beneficiary relocates on either a temporary or permanent basis to an area that is outside the normal service area of the initial supplier; the beneficiary chooses to obtain equipment from a different supplier; or other cases in which CMS or the carrier determine that an exception is warranted.

With certain exceptions, the supplier may not switch out equipment at any time during the 13 month rental period unless (a) the item was lost, stolen, irreparably damaged, being repaired or no longer functions, (b) physician orders a different equipment or (c) beneficiary chooses to obtain a newer technology or upgraded item and signs an advanced beneficiary notice acknowledging his or her liability. In all cases, suppliers must replace the equipment with an equipment of the same or better value. This requirement applies to rentals beginning or after January 1, 2007

For rentals beginning or after January 1, 2007, CMS is requiring the supplier to disclose to the beneficiary its intentions regarding assignment of all potential monthly rental claims for oxygen equipment/capped rental DME items. CMS will post this information on a CMS or CMS contractor website(s) indicating (1) the percentage of beneficiaries for which a supplier accepts assignment and (2) the percentage of cases which the supplier accepted assignment during the beneficiary’s entire rental period.

At least two months prior to ownership transfer of capped rental equipment, suppliers will be required to notify beneficiaries of whether they will be able to service the equipment after ownership transfers to the beneficiary. This requirement applies to rentals beginning or after January 1, 2007

In cases where a beneficiary moves, either temporarily or permanently outside the initial supplier’s service area, CMS will allow another supplier to be arranged to furnish the item on either a temporary or permanent basis.