

February 9, 2009

The Honorable Charles B. Rangel  
Chairman  
House Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Henry A. Waxman  
Chairman  
House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Dave Camp  
Ranking Member  
House Committee on Ways and Means  
1139 Longworth House Office Building  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member  
House Committee on Energy and Commerce  
2322-A Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Rangel, Ranking Member Camp, Chairman Waxman, and Ranking Member Barton:

We are writing today to ask that the Ways and Means Committee and the Energy and Commerce Committee urge the Centers for Medicare and Medicaid Services (CMS) to provide appropriate payments for home oxygen therapy to continue through the beneficiary's period of medical need. Specifically, we are concerned that current CMS post-36 month payment policies, which went into effect on January 1, 2009, are adversely impacting quality home oxygen therapy.

As you are aware, prior to the Deficit Reduction Act of 2005 (DRA), home oxygen therapy was paid through a bundled rental and service payment that covered the cost of equipment, service, repairs and supplies as long as the therapy was medically necessary. A provision in the DRA limited monthly rental payments to oxygen providers to 36 months of continuous use. After 36 months, Congress instructed CMS to establish adequate payments for continued care of these patients. Unfortunately, despite the authority Congress provided CMS, the agency has not established adequate payments after the 36<sup>th</sup> month.

CMS' final rule, published on October 30, 2008, addressing the treatment of oxygen therapy post 36 months, established very limited payment levels and unreasonable obligations that are impeding the provision of quality care to Medicare beneficiaries on home oxygen therapy. These policies require the original home oxygen provider to continue to provide, without any payment, unscheduled service and maintenance visits, 24-hour emergency care, equipment repairs, and oxygen supplies and accessories for a two year period following the rental cap. The rule also establishes inadequate payment levels for scheduled maintenance and service equal to one visit every six months at a payment rate of approximately \$30 per visit.

Patients and providers have begun seeing the detrimental effects of the recently implemented Medicare oxygen rule. We are aware of several different scenarios that are occurring with patients who have reached or are nearing the 36-month rental cap:

1. A patient who would like to move out of the original provider's service area, but the provider cannot find a company in the new area that is willing to provide home oxygen therapy in the new location, due to the minimal payment levels.
2. A hospital that is seeking to discharge a patient to a different area of the country but is unable to find an oxygen provider and therefore cannot discharge the patient, forcing the Medicare program to pay for additional beneficiary time in the hospital.
3. A patient who would like to switch providers cannot find another company willing to provide home oxygen therapy, due to minimal payment levels.
4. A company is going out of business and patients cannot find a new home oxygen provider, again, due to minimal payment levels.

Home oxygen is a critical, life-sustaining medical treatment prescribed to nearly 1.5 million Medicare beneficiaries annually who suffer from respiratory illnesses such as chronic obstructive pulmonary disease (COPD). COPD is a progressive, incurable disease that causes irreversible loss of lung function. Although medications have not been shown to be beneficial in reversing lung damage, home oxygen therapy, when properly prescribed and maintained, has been shown to slow the progress of this degenerative disease.

Home oxygen providers are more than just suppliers of equipment, they are also front-line caregivers. They educate patients on the proper use their equipment, answer patients' questions, make repairs and adjustments, and ensure that patients are receiving the prescribed amount of oxygen. These providers are on the first line of care for Medicare beneficiaries who require home oxygen therapy. They take calls at all hours and in rural areas drive long distances to make sure that their patients receive the care they need. Without reimbursements for these visits, suppliers will not be able to afford to provide the current level of care for many of these oxygen patients.

We seek your assistance in urging CMS to revise post-36 month oxygen payment policies to address serious shortcomings that are creating hardships for both oxygen patients and providers of these services. Without immediate changes to the Medicare oxygen policies, patient care will be compromised and Medicare costs will increase.

We look forward to working with you on this critical issue and hope you will consider taking further congressional action should it be necessary. We appreciate your attention to this matter as we work to protect beneficiary access to the home oxygen therapy and strive for reform of the benefit.

Sincerely,

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Tom Price, M.D

Member of Congress

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Mike Ross

Member of Congress

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Jo Ann Emerson

Member of Congress

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Heath Shuler

Member of Congress

cc: The Honorable Fortney Pete Stark  
Chairman  
Subcommittee on Health  
House Committee on Ways and Means

The Honorable Frank Pallone, Jr.  
Chairman  
Subcommittee on Health  
House Committee on Energy and Commerce

The Honorable Wally Herger  
Ranking Member  
Subcommittee on Health  
House Committee on Ways and Means

The Honorable Nathan Deal  
Ranking Member  
Subcommittee on Health  
House Committee on Energy and Commerce