



Summary of Oxygen Regulations implemented by The Deficit Reduction Act of 2005 and Medicare Improvements for Patients and Providers Act of 2008

Background

As suppliers of oxygen and oxygen equipment covered under the Medicare Home Oxygen Benefit are most aware, recent changes to payment methodology for the benefit have drastically altered the way in which suppliers are compensated.

Section 5101(b) The Deficit Reduction Act of 2005 (DRA) amended section 1834(a)(5) of the Act, effectively implementing a 'cap' on rental payments for oxygen at 36 months and thereafter transfer ownership title of the oxygen equipment to the beneficiary. In what seemed at the time to be a victory for oxygen suppliers, the Medicare Improvements for Patients and Providers Act (MIPPA), enacted on July 15, 2008, repealed the transfer of title of ownership. While payments for the oxygen benefit will continue to cap at 36 months, beneficiaries are no longer set to assume ownership of the equipment once their cap has been reached. Through the October 29, 2008 release of CMS-1403-FC suppliers found that the repeal of the transfer of title may not have been such a victory after all. While suppliers will now retain ownership of the equipment, the new regulations are onerous at very least and likely to ultimately find themselves unworkable.

A summary of the regulations set forth by DRA, MIPPA and CMS-1403-FC follows...

Pre-Cap

- Suppliers will be paid 36-monthly rental payment to provide oxygen and equipment for the reasonable useful lifetime of the oxygen equipment.
 - Reasonable useful lifetime of oxygen equipment has been deemed to be five years.

- The reasonable useful lifetime is determined based on the date of initial delivery and not the actual age of the equipment.
 - The reasonable useful lifetime of the equipment is not tied directly to the cap date.
 - Beneficiaries who began the Medicare Oxygen Benefit prior to January 1, 2004 may be eligible for a new cap at January 1, 2009.
- Suppliers may not change a patient's equipment type unless one of following exceptions applies:
 - The doctor orders a change through a change in prescription
 - The patient elects to change and signs an ABN
 - A change in equipment, even in the event of one of the applicable exceptions, will not begin a new 36-month rental period.
- In the event that a patient relocates to a residence outside the original supplier's normal coverage area, the supplier is to assist the beneficiary in finding a new supplier at their new location.
 - The new supplier will receive only the number of months remaining on the 36-month rental period.
 - For example: A patient chooses to change suppliers after 20 months. The new supplier will receive only 16 month's payments before the patient caps.
- Suppliers must continue to service beneficiaries who are non-compliant on their co-pay.
 - It is the supplier's responsibility to deal directly with the beneficiary regarding payments.
- Interruptions in service of less than 60 days plus the remaining days on the last paid month will not begin a new rental period.
- A break in need of greater than 60 days plus the remaining days in the last paid month will result in:
 - New period of continuous use,
 - New 36-month rental period,
 - New reasonable useful lifetime period.
 - In this event, new medical necessity documentation would be required.
 - A narrative explaining the reasoning for the interruption which shows that the medical necessity in the prior episode ended.
 - A new period will **not** begin if a break in need did not occur during the interruption.
 - For example: the patient enters the hospital but continues to use oxygen equipment.
- The supplier must maintain the initial proof-of-delivery to show at 60 months that equipment has met its reasonable useful lifetime.

Post-Cap

- The supplier accepting the 36th month's payment must continue to provide equipment, supplies and contents to the patient for the remainder of the reasonable useful lifetime of the oxygen equipment. No additional equipment rental payments will be made after the 36th month.
 - This regulation applies even in the event that the supplier goes out of business.
 - Suppliers going out of business may only elect to discontinue taking new patients, but are obligated to continue serving all patients with whom they've already begun a rental period.
 - A CMS representative has stated that a new 36-month rental period may be granted when a patient is forced to find a new supplier because their previous supplier went out of business for financial reasons. We eagerly await guidance on this procedure.

Maintenance and Repair

- The supplier will be responsible for maintenance, servicing, and repair of concentrators.
 - Suppliers will be paid one maintenance and servicing payment every six months for the year 2009.
 - Payment will be made for two 15-minute increments totaling approximately \$30.00.
 - Payment will not be made for emergency or on-call service calls.
 - Payment will not be made for replacement equipment or parts.
 - Suppliers of liquid or gaseous oxygen equipment will not receive payment for maintenance/service/repair.
 - CMS expects that routine maintenance will occur at the time of contents delivery.
- A new 36-month rental period will begin in the event that the equipment is irreparably damaged (lost, stolen, in a fire, etc...).
 - This does not include instances where the equipment simply stops working and is beyond repair.
 - In the event that the equipment simply no longer functions and is beyond repair new equipment will be provided at the expense of the supplier.

Contents and Supplies

- Suppliers will be paid \$77.45/month for the delivery of gaseous or liquid oxygen contents.
 - Contents will be billed using the E0441-E0444 codes.
 - Those providing contents for both stationary and portable systems will be compensated \$154.90/month.
 - No contents payments will be made for the use of not requiring the physical delivery of actual contents (concentrators).

- In the event that portability was prescribed at a later date than stationary equipment, the portable payments will cap 36 months after prescribed (or will restart at the time stationary equipment reaches its reasonable useful lifetime).
 - Suppliers may begin billing for portable contents at the time when stationary equipment caps, creating an overlap in portable add-on payments and portable contents payments (E0431 and E0443)
- It is not necessary the suppliers make a monthly physical delivery of contents in order to bill for that month. The payment is for the assurance that the patient has sufficient oxygen contents delivered to their home.
 - For example: A supplier may choose to deliver a maximum of 3 month's oxygen contents to a patient and then bill Medicare for the 3 subsequent months.
- Suppliers may not limit content amounts for an individual patient. Contents payments are made for one month's supply, regardless of the amount of tanks required during that month.
 - For example, a supplier may not limit a patient to 10 tanks per month.
 - Patients are not limited to using portable contents for only portability within the home.
 - While the oxygen benefit was created to be a benefit within the home, CMS has stated that there is no limit to how far a beneficiary may go with their portable equipment and contents.
- A non-participating supplier may, at any point, choose to bill claims non-assigned on a month-by-month basis.
 - Many suppliers are using this option to charge a 'usual and customary fee' for oxygen contents, especially for those beneficiaries using an excessive amount of contents (or any other extreme circumstances).
- No payment will be made to the supplier for providing oxygen tubing, face masks, canulas, or filters.

Relocating Patients

- In the event that a beneficiary relocates outside the supplier's normal service area, the supplier **remains obligated** to maintain equipment, deliver contents, and provide supplies to the beneficiary for the duration of the reasonable useful lifetime of the equipment.
 - Suppliers finding themselves in the situation may elect to subcontract the services out to a supplier in near the beneficiary's new location.

Break in Service and Break in Necessity

- A break in necessity of less than 60 days plus the remaining days on the last paid rental month will not result in a new rental period.

- A break in necessity of greater than 60 days plus the remaining days on the last paid rental month will result in a new 36 month rental period.
 - The following documentation will be required when restarting the patient:
 - New prescription
 - Detailed written order
 - New Initial CMN
 - Qualifying oxygen test results performed within 30 days of initial date of service (not new date)
 - Documentation supporting new medical need
 - Documentation explaining the interruption in need
 - Documentation supporting the length of interruption
 - Pick up date
 - Delivery date
 - The claim for the first month of the new rental period should include:
 - New Initial CMN
 - Narrative statement
 - “Break in medical need greater than 60 days”
- During the time after the end of the 36-month rental period to the end of the reasonable useful lifetime, a new 36-month rental period will not begin for either a break in necessity or break in service.
- A break in service of any length does not start a new rental period unless supporting documentation can show that there was also a break in necessity of greater than 60 days plus the remaining days on the last paid rental month.
 - This includes hospital stays, SNF stays, or hospice

Month 60

- Once oxygen equipment has been in continuous use for the reasonable useful lifetime of the equipment the suppliers obligations have been met.
- The beneficiary may elect to receive new oxygen equipment and begin a new 36-month rental period.
 - Note that this is the beneficiary’s election, not the supplier’s.
 - The equipment need not be brand new, only new to the patient.
- Suppliers beginning a new rental period will use the RA modifier to bill the 61st month.
 - This modifier will stop the claim for a processor to edit and update the system with a new initial date.
 - A narrative must state why the concentrator is being replaced.
 - i.e. the patient elected to receive new oxygen equipment after greater than five years

- For claims submitted electronically use loop 2400 (line note), segment NTE02 of the ASC X12, version 4010A1 professional electronic claim format.
 - For claims submitted using CMS-1500, report the information in item 19.
- A new **Initial** CMN will be required in order to begin a new 36-month rental period.
 - New testing, however, will not be required.
 - The most recent qualifying value and test date would be entered on the CMN.
 - New testing may be required only in the event that it is necessary in order to meet existing medical review guidelines for oxygen and oxygen equipment.
 - **No requirement for a physician visit specifically related to the CMN.**
- Proof-of-delivery documentation must be maintained in your files for replacement oxygen equipment. It must document that equipment has been in use for at least 5 years. The equipment in use **does not** need to be the same piece of equipment for the entire 5-year period.
- At this point, the supplier may elect to discharge the beneficiary to another supplier to begin their new 36-month rental period.

Lost, Stolen, or Irreparably Damaged Equipment

- In the event that equipment is lost, stolen, or irreparably damaged (in reference to a specific incident as opposed to wear and tear) the patient may elect to receive new equipment.
 - The supplier may begin billing a new 36-month rental period.
 - Note that this is the beneficiary's election, not the supplier's.
 - The equipment need not be brand new, only new to the patient.
- Suppliers beginning a new rental period will use the RA modifier to bill the first month of the new rental period.
 - This modifier will stop the claim for a processor to edit and update the system with a new initial date.
 - A narrative must state why the concentrator is being replaced and supporting documentation must be maintained.
 - i.e. "the equipment was stolen" and a copy of a police report should be kept on file
 - For claims submitted electronically use loop 2400 (line note), segment NTE02 of the ASC X12, version 4010A1 professional electronic claim format.

- For claims submitted using CMS-1500, report the information in item 19.
- A **new Initial** CMN will be required in order to begin a new 36-month rental period.
 - New testing, however, will not be required.
 - The most recent qualifying value and test date would be used on the CMN.
 - New testing may be required only in the event that it is necessary in order to meet existing medical review guidelines for oxygen and oxygen equipment.
 - **No requirement for a physician visit specifically related to the completion of the CMN.**