



**News Flash** - Did you know that your local Medicare contractor (carrier, fiscal intermediary, or Medicare Administrative Contractor (MAC)) is a valuable source of news and information regarding Medicare business in your specific practice location? Through their electronic mailing lists, your local contractor can quickly provide you with information pertinent to your geographic area, such as local coverage determinations, local provider education activities, etc. If you have not done so already, you should go to your local contractor website and sign up for their listserv or e-mailing list. Many contractors have links on their home page to take you to their registration page to subscribe to their listserv. If you do not see a link on the homepage, just search their site for "listserv" or "e-mail list" to find the registration page. If you do not know the Web address of your contractor's homepage, it is available at <http://www.cms.hhs.gov/MLNProducts/downloads/CallCenterTollNumDirectory.zip> on the CMS website.

MLN Matters Number: MM6297

Related Change Request (CR) #: 6297

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Implementation Date: January 6, 2009

## 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 Durable Medical Equipment Prosthetics Orthotics & Supplies (DMEPOS)

### Provider Types Affected

Physicians, providers and suppliers submitting claims to Medicare Carriers, Durable Medical Equipment Medicare Administrative Contractors (DME MACs), Fiscal Intermediaries (FIs), Part A/B MACs (A/B MACs), and/or Regional Home Health Intermediaries (RHHIs) for services provided to Medicare beneficiaries

### Provider Action Needed

This article is based on Change Request (CR) 6297 and alerts providers that the Centers for Medicare & Medicaid Services (CMS) **terminates all Round I supplier contracts awarded under the DMEPOS Competitive Bidding Program,**

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as a result of Section 154 of the MIPPA which delays the Program. 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. This article also provides guidance on the changes in payment for oxygen and oxygen equipment as a result of section 144(b) of the MIPPA of 2008, as well as, additional claims processing and payment instructions for DMEPOS items. **See the Key Points** of this article for specific instructions that impact you.

## Background

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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.

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. CR6297 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 CR (CR6296). Once CR 6296 is released, a related MLN Matters article will be available at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM6296.pdf> on the CMS website.

## Key Points in CR6297

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### Payment Policies for Oxygen and Oxygen Equipment and Capped Rental Following the Enactment of the MIPPA of 2008

- 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

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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.

- 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 13<sup>th</sup> continuous rental month must transfer title of the equipment to the beneficiary.
- 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 36<sup>th</sup> 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**

- 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 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

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item (base equipment/device) furnished as part of the service of repairing the DMEPOS item (base equipment/device).

- **Medicare contractors** will accept modifier “RA” rather than “RP” for replacement of beneficiary-owned DMEPOS due to loss, irreparable damage, or when the item has been stolen.
- **Medicare contractors** will accept modifier “RB” rather than “RP” for replacement parts furnished in order to repair beneficiary-owned DMEPOS.

#### **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 36<sup>th</sup> 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 13<sup>th</sup> 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.
- The supplier who furnished the stationary and/or portable oxygen equipment during the 36-month rental period is required to continue furnishing 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.
- The supplier who receives payment for furnishing the equipment during the 36<sup>th</sup> 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

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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:

HCPCS Code	Descriptor
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

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HCPCS Code	Descriptor
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.

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- 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, which is available at <http://www.cms.hhs.gov/manuals/IOM/list.asp> on the CMS website. Suppliers should 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 supplier-owned oxygen equipment, with the exception of an in-home visit by suppliers to inspect oxygen concentrators and transfilling 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.
- 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

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payment be made for any replacement part furnished as part of any repair or maintenance and servicing of oxygen equipment.

- Payment shall not be made for loaner equipment furnished during periods when these repairs or maintenance and servicing services are performed.

### **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 Medicare 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 13<sup>th</sup> 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 36<sup>th</sup> 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.

### **Revisions to the Labor Payment Rates Associated with Repairing DMEPOS Items**

- As part of this update, CMS is 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, CMS is revising the fees to apply inflation updates in years where it determined that these updates were not provided. Secondly, state payment amounts below the median state payment amount are being increased to

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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 (see *Additional Information* section of this article) 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 ( $\frac{1}{4}$ ) 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.
- **DME MACs, RHHs and Medicare Carriers and/or MACs** will use the 2009 allowed payment amounts for code E1340 in *Attachment A* (see *Additional Information* section of this article) 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.
- DME MACs, FIs, Medicare Carriers and/or MACs will 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.

### Medicare Coverage of Elastic Support Garments

- CMS has received questions regarding coverage of elastic support garments such 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 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

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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 Medicare 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.

### Additional Information

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For complete details regarding this Change Request (CR) please see the official instruction, CR6297, issued to your Medicare FI, RHHI, DME/MAC, or A/B MAC. That instruction may be viewed by going to <http://www.cms.hhs.gov/Transmittals/downloads/R421OTN.pdf> on the CMS website.

For more information on CR5461, you may go to <http://www.cms.hhs.gov/Transmittals/downloads/R1177CP.pdf> on the CMS website. The related MLN Matters article may be found at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/mm5461.pdf> on the CMS website.

If you have questions, please contact your Medicare Carrier, FI, A/B MAC, DME/MAC, and/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.

Attachment A begins on the next page.

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## Attachment A

## 2009 Repair and Service Fees, 15 minute unit

STATE	E1340	L4205	L7520		STATE	E1340	L4205	L7520
AK	23.59	28.79	33.88		NC	13.41	19.99	27.14
AL	24.71	19.99	27.14		ND	13.41	28.73	33.88
AR	24.71	19.99	27.14		NE	13.41	19.97	37.84
AZ	22.40	19.97	33.39		NH	13.41	19.97	27.14
CA	22.40	32.83	38.26		NJ	15.99	19.97	27.14
CO	22.40	19.99	27.14		NM	14.00	19.99	27.14
CT	19.95	20.45	27.14		NV	14.40	19.97	36.99
DC	19.95	19.97	27.14		NY	14.40	19.99	27.14
DE	19.22	19.97	27.14		OH	14.40	19.97	27.14
FL	17.46	19.99	27.14		OK	13.41	19.99	27.14
GA	18.10	19.99	27.14		OR	13.41	19.97	39.03
HI	15.61	28.79	33.88		PA	13.41	20.56	27.14
IA	15.49	19.97	32.49		PR	13.41	19.99	27.14
ID	15.49	19.97	27.14		RI	13.41	20.58	27.14
IL	13.41	19.97	27.14		SC	13.41	19.99	27.14
IN	13.41	19.97	27.14		SD	13.41	19.97	36.28
KS	13.41	19.97	33.88		TN	13.41	19.99	27.14

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STATE	E1340	L4205	L7520		STATE	E1340	L4205	L7520
KY	13.41	25.60	34.71		TX	13.41	19.99	27.14
LA	13.41	19.99	27.14		UT	13.41	19.97	42.27
MA	15.32	19.97	27.14		VA	13.41	19.97	27.14
MD	13.41	19.97	27.14		VI	13.41	19.99	27.14
ME	13.41	19.97	27.14		VT	13.41	19.97	27.14
MI	13.41	19.97	27.14		WA	13.41	29.30	34.80
MN	13.41	19.97	27.14		WI	13.41	19.97	27.14
MO	13.41	19.97	27.14		WV	13.41	19.97	27.14
MS	13.41	19.99	27.14		WY	13.41	26.65	37.84
MT	13.41	19.97	33.88					

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