

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-04 Medicare Claims Processing	Centers for Medicare & Medicaid Services (CMS)
Transmittal 1961	Date: April 30, 2010
	Change Request 6838

SUBJECT: Payment for Replacement of Oxygen Equipment In Bankruptcy Situations

I. SUMMARY OF CHANGES: The Centers for Medicare and Medicaid Services (CMS) is adding Section 50.4 in Pub. 100-04, Chapter 20 to clarify that contractors may make payment for replacement oxygen equipment in bankruptcy situations.

EFFECTIVE DATE: October 1, 2010

IMPLEMENTATION DATE: October 4, 2010

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	20/50/50.4/Payment for Replacement of Oxygen Equipment In Bankruptcy Situations

III. FUNDING:

For Fiscal Intermediaries (FIs), Regional Home Health Intermediaries (RHHIs) and/or Carriers:

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

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:

Business Requirements

Manual Instruction

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

Attachment - Business Requirements

Pub. 100-04	Transmittal: 1961	Date: April 30, 2010	Change Request: 6838
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SUBJECT: Payment for Replacement of Oxygen Equipment in Bankruptcy Situations

Effective Date: October 1, 2010

Implementation Date: October 4, 2010

I. GENERAL INFORMATION

A. Background: This transmittal adds Section 50.4 to Chapter 20 of the Medicare Claims Processing Manual (Pub. 100-04) to provide instructions regarding payment for the replacement of oxygen equipment in the event that a supplier files for Chapter 7 or 11 bankruptcy under Title 11 of the United States Code and is unable to continue furnishing oxygen and oxygen equipment to patients. In accordance with 42 CFR 414.210(f) and 42 CFR 414.226(g) payment can be made for replacement of oxygen equipment if the equipment has been in continuous use by the patient for the equipment's reasonable useful lifetime or has been lost, stolen or irreparably damaged, resulting in a new reasonable useful lifetime period and a new 36 month rental payment period.

B. Policy: Effective with this instruction, contractors are to verify supporting documentation and consider oxygen equipment as lost in bankruptcy situations. Thereby, a new reasonable useful lifetime period and a new 36 month rental payment period may begin on the date that the replacement equipment is furnished. Similar to other situations where oxygen equipment is lost, stolen, or irreparably damaged, the contractor must verify claims information is included and valid with the claim for blood gas testing, Oxygen Certificate of Medical Necessity (CMN), the Healthcare Common Procedure Coding System (HCPCS) code for the replacement oxygen equipment, the HCPCS modifier RA *Replacement of a DME Item*, and a narrative note on why the equipment was replaced. Proof-of-delivery documentation from the previous supplier is not required. In addition, the contractor must verify the following information is included and valid regarding the supplier who declared Chapter 7 or 11 bankruptcy under Title 11 of the United States Code:

- a) For a Chapter 7 bankruptcy, supporting documentation must include information documenting that the previous supplier filed a petition for a Chapter 7 bankruptcy in a United States Bankruptcy Court;
- b) For a Chapter 11 bankruptcy, supporting documentation must include information that the previous supplier filed a petition for a Chapter 11 bankruptcy in a United States Bankruptcy Court; and documents filed in the bankruptcy case confirming that the equipment was sold or is scheduled to be sold as evidenced by one of the following:
 - i) The Court order authorizing and/or approving the sale; or
 - ii) Supporting documentation that the sale is scheduled to occur or has occurred, e.g., a bill of sale, or an asset purchase agreement signed by the seller and the buyer; or
 - iii) A Court order authorizing abandonment of the equipment.

Contractors shall deny claims for replacement oxygen equipment due to bankruptcy if verification of the above supporting documentation is unsuccessful.

II. BUSINESS REQUIREMENTS TABLE

Use "Shall" to denote a mandatory requirement

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
6838.1	Contractors shall comply with Section 50.4 of Chapter 20 for payment of replacement oxygen equipment in situations when a supplier files for Chapter 7 or 11 bankruptcy under Title 11 of the United States Code.	X	X			X					J14
6838.2	Contractors shall make payment for replacement stationary oxygen equipment furnished in compliance with 6838.1 when billed with one of the following HCPCS codes and the RA modifier: E0424, E0439, E1390, E1391, E1405 or E1406.	X	X			X					J14
6838.3	Contractors shall make payment for replacement portable oxygen equipment furnished in compliance with 6838.1 when billed with one of the following HCPCS codes and the RA modifier: E0431, E0433, E0434, E1392, or K0738.	X	X			X					J14
6838.4	Contractors shall verify the following information is included and valid with a replacement oxygen equipment claim: <ul style="list-style-type: none"> a) a new, initial Oxygen Certificate of Medical Necessity (CMN) with the first claim; b) The most recent qualifying value and test date of the blood gas testing should be entered on the CMN; and c) The initial date provided on the CMN should be the date of delivery for the replacement oxygen equipment. d) Proof-of-delivery documentation from the previous supplier is not required. 		X						X		J14
6838.5	Contractors shall verify supporting documentation for bankruptcy listed in §50.4 of Chapter 20 is included and valid with a replacement oxygen equipment claim.	X	X			X					J14
6838.6	Contractors shall deny/reject claims for replacement oxygen equipment due to bankruptcy if verification of the supporting documentation of 6838.5 is unsuccessful.	X	X			X	X		X		J14
6838.6.1	Medicare contractors shall assign group code CO.	X	X			X	X		X		J14
6838.6.2	Contractors shall use the following reason and remark codes and message when denying claims for replacement oxygen equipment due to bankruptcy if verification of the supporting documentation of 6838.5 is unsuccessful. A1 - Claim/Service Denied. N225 - Incomplete/invalid documentation/orders/notes/summary/report/chart	X	X			X	X		X		J14

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	<p>MSN 9.2 - This item or service was denied because information required to make payment was missing.</p> <p>MSN 9.2 - Este artículo o servicio fue denegado porque la información requerida para hacer el pago fue omitida.</p>										

II. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
6838.7	<p>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.</p> <p>Contractors 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.</p>	X	X			X	X		X	J14	

IV. SUPPORTING INFORMATION

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

X-Ref Requirement Number	Recommendations or other supporting information:
6838.8	<p>JSM/TDL-10042, 11-03-09, Home Oxygen Services and Bankruptcy</p> <p>Change Request 6297, Transmittal 421, "Changes in Payment for Oxygen Equipment" as a Result of Section 144(b) of the Medicare Improvements for Patients and Providers Act</p>

X-Ref Requirement Number	Recommendations or other supporting information:
	(MIPPA) of 2008 (December 23, 2008)

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

V. CONTACTS

Pre-Implementation Contact(s): For policy questions, contact Chris Molling, Christopher.Molling@cms.hhs.gov or Anita Greenberg, Anita.Greenberg@cms.hhs.gov. For claims processing questions, contact Susan Webster at Susan.Webster@cms.hhs.gov

Post-Implementation Contact(s): For policy questions, contact Chris Molling, Christopher.Molling@cms.hhs.gov or Anita Greenberg, Anita.Greenberg@cms.hhs.gov For claims processing questions, contact Susan Webster at Susan.Webster@cms.hhs.gov

VI. FUNDING

Section A: For *Fiscal Intermediaries (FIs)*, *Regional Home Health Intermediaries (RHHIs)*, and/or *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.

Medicare Claims Processing Manual

Chapter 20 - Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

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(Rev.1961, 04-30-10)

50.4 - Payment for Replacement of Oxygen Equipment in Bankruptcy Situations

50.4 – Payment for Replacement of Oxygen Equipment in Bankruptcy Situations

(Rev.1961, Issued: 04-30-10, Effective: 10-01-10, Implementation: 10-04-10)

When a supplier files for Chapter 7 or 11 bankruptcy under Title 11 of the United States Code and cannot continue to furnish oxygen to its Medicare beneficiaries, the oxygen equipment is considered lost in these situations and payment may be made for replacement equipment. For replacement oxygen equipment, a new reasonable useful lifetime period and a new 36 month rental payment period begins on the date of delivery of the replacement oxygen equipment.

In advance of payment, contractors must review supporting documentation to verify that the supplier declared bankruptcy to assure that payment for replacement of oxygen equipment can legitimately be made to a successor supplier.

- For a Chapter 7 bankruptcy, supporting documentation must include court records documenting that the previous supplier filed a petition for a Chapter 7 bankruptcy in a United States Bankruptcy Court,*
- For a Chapter 11 bankruptcy, supporting documentation must include Court records documenting that the previous supplier filed a petition for a Chapter 11 bankruptcy in a United States Bankruptcy Court; and documents filed in the bankruptcy case confirming that the equipment was sold or is scheduled to be sold as evidenced by one of the following:*
 - The Court order authorizing and/or approving the sale; or*
 - Supporting documentation that the sale is scheduled to occur or has occurred, e.g., a bill of sale, or an asset purchase agreement signed by the seller and the buyer; or*
 - A Court order authorizing abandonment of the equipment.*

Similar to other situations where oxygen equipment is lost, stolen, or irreparably damaged, the contractor must verify the following information is included and valid with the claim: blood gas testing results, Oxygen Certificate of Medical Necessity (CMN), the Healthcare Common Procedure Coding System (HCPCS) code for the replacement oxygen equipment, the HCPCS modifier RA Replacement of a DME Item, and a narrative note on why the equipment was replaced.

Under no circumstances may payment be made for replacement equipment when the original supplier divests business and equipment outside of the court bankruptcy process.