



**News Flash** – The Centers for Medicare & Medicaid Services (CMS) is now soliciting bids for the Round 1 Rebid of the Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program. All bids must be submitted in DBidS, the on-line bidding system, by 9 p.m. prevailing Eastern Time on December 21, 2009; all required hardcopy documents that must be included as part of the bid package must be postmarked by 11:59 p.m. on December 21, 2009. The Round 1 Rebid competitive bidding areas (CBAs), product categories, DBidS information, bidder charts, educational materials, complete RFB instructions, and registration information, can all be found at <http://www.dmecompetitivebid.com/palmetto/cbic.nsf/DocsCat/Home>, which is the Competitive Bidding Implementation Contractor (CBIC) website.

MLN Matters® Number: MM6692

Related Change Request (CR) #: 6692

Related CR Release Date: November 6, 2009

Effective Date: April 1, 2010

Related CR Transmittal #: R593 OTN

Implementation Date: April 5, 2010

**Note:** This article was updated on January 18, 2013, to reflect current Web addresses. All other information remains unchanged.

## Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program Round One Rebid Implementation--Phase 8B: Oxygen Modality

### Provider Types Affected

Suppliers submitting claims to Medicare Regional Home Health Intermediaries (RHHIs) or Durable Medical Equipment Medicare Administrative Contractors (DME MACs) for stationary or portable oxygen equipment provided to Medicare beneficiaries need to be aware of this article.

### Provider Action Needed

The Centers for Medicare & Medicaid Services (CMS) issued CR 6692 to announce changes in the way grandfathered oxygen competitive bid claims are processed following a change in stationary or portable equipment modality under Round One of the DMEPOS Competitive Bidding Program. RHHIs and DME MACs are required to apply a single 36-month cap for stationary oxygen

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equipment and a separate single 36-month cap for portable oxygen equipment regardless of how many different HCPCS codes are billed for a beneficiary during the rental period. See the **Background and Key Points** sections below and make certain your billing staff is aware of these changes.

## Background

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The Medicare DMEPOS Competitive Bidding Program was established by section 302(b)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173) which amended section 1847 of the Social Security Act (the Act) to require the Secretary to establish and implement programs under which CBAs are established throughout the United States for contract award purposes for the furnishing of certain competitively priced items and services for which payment is made under Part B.

Section 1847(a)(4) of the Act requires that in the case of covered DME items for which payment is made on a rental basis under section 1834(a) of the Act, and in the case of oxygen for which payment is made under section 1834(a)(5) of the Act, the Secretary establish a grandfathering process by which rental agreements for those covered items and supply arrangements with oxygen suppliers entered into before the start of a competitive bidding program may be continued. This grandfathering provision provides the beneficiary the choice of receiving a grandfathered item from a grandfathered supplier or a contract supplier. Unless the beneficiary elects to change suppliers, the rental agreements and supply arrangements for grandfathered items last for the duration of a beneficiary's medical need or for the items reasonable useful lifetime. In the case of oxygen and oxygen equipment, a change in stationary or portable oxygen equipment modality during the 36-month period does not start a new 36 month rental period and does not, in and of itself, terminate a supplier's role as a grandfathered supplier of oxygen and oxygen equipment.

## Key Points of CR 6692

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- For stationary oxygen systems **codes E0424, E0439, E1390, E1391, E1405, and E1406**, any change in modalities at any point during the 36-month rental payment period (i.e., from one HCPCS code for a stationary oxygen system to another) does not affect the status of a grandfathered supplier and its ability to continue billing and receiving payment for furnishing stationary oxygen and oxygen equipment to a beneficiary residing in a competitive bidding area (CBA) for whom it had furnished such stationary oxygen and oxygen equipment prior to the start of the competitive bidding program.
- For portable oxygen equipment **codes E0431, E0434, E1392, and K0738**,

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any change in modalities at any point during the 36-month rental payment period (i.e., from one HCPCS code for portable oxygen equipment to another) does not affect the status of a grandfathered supplier and its ability to continue billing and receiving payment for furnishing portable oxygen and oxygen equipment to a beneficiary residing in a CBA for whom it had furnished such portable oxygen and oxygen equipment prior to the start of the competitive bidding program.

- Previously CMS instructed that non-contract suppliers of stationary and portable oxygen equipment **may continue to provide their equipment to their existing beneficiaries, if the beneficiary agrees to the arrangement.** CMS also instructed that, if a non-contract supplier does not want to continue to provide oxygen equipment to its existing beneficiaries at the bid amount, the beneficiary must obtain the item from a contract supplier. If a beneficiary no longer rents a grandfathered item from his or her previous supplier (because the previous supplier elected not to become a grandfathered supplier or the beneficiary elected to change suppliers), a maximum of 45 rental payments may be made for portable oxygen equipment and up to 45 payments may be made for stationary oxygen equipment.
- In situations where a beneficiary in a CBA is receiving oxygen services via portable and/or stationary oxygen equipment prior to competitive bidding and the beneficiary's oxygen equipment and suppliers are not grandfathered (because the previous supplier chose not to be grandfathered or the beneficiary chose not to stay with that supplier), Medicare will allow for a minimum of 10 monthly rental payments to be paid to the contract supplier for any modality of portable and/or stationary oxygen equipment. In such cases, the beneficiary is liable for the co-payments for any additional payments made to the contract supplier.

## Additional Information

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If you have questions, please contact your Medicare RHHI or DME MAC at their toll-free number which may be found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/provider-compliance-interactive-map/index.html> on the CMS website.

The official instruction, CR6692, issued to your Medicare RHHI or DME MAC regarding this change may be viewed at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R5930TN.pdf> on the CMS website.

For an overview of the DMEPOS competitive bidding program you may go to <http://www.dmecompetitivebid.com/palmetto/cbic.nsf/DocsCat/Home> on the Internet.

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