



The revised Medicare Fraud & Abuse fact sheet (February 2010), directs you to a number of sources of information pertaining to Medicare fraud and abuse, and helps you understand what to do if you suspect or become aware of incidents of potential Medicare fraud or abuse. It can be downloaded at [http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Fraud\\_and\\_Abuse.pdf](http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Fraud_and_Abuse.pdf) from the Centers for Medicare & Medicaid Services' (CMS) Medicare Learning Network.

MLN Matters® Number: MM6934

Related Change Request (CR) #: 6934

Related CR Release Date: June 10, 2010

Effective Date: October 1, 2010

Related CR Transmittal #: R7180TN

Implementation Date: October 4, 2010

**Note:** MM6934 was revised on May 26, 2015, to add a reference to MLN Matters® article [MM9060](#) that advises providers of changes that MACs are being required to make to their systems for the processing of claims for grandfathered items subject to DMEPOS CBP. All other information remains unchanged.

## Durable Medical Equipment National Competitive Bidding Implementation -- 10G: Paying for Oxygen Equipment when Grandfathered

### Provider Types Affected

This article is for grandfathered suppliers billing Durable Medical Equipment Medicare Administrative Contractors (DME MACs) for oxygen equipment furnished to Medicare beneficiaries after the start of a DMEPOS Competitive Bidding Program.

### Provider Action Needed

CMS issued Change Request (CR) 6934 to alert suppliers that a **non-contract supplier who chose to be a grandfathered supplier for oxygen and oxygen equipment (that is, portable or stationary) should also furnish additional oxygen equipment when medically necessary (that is, portable or stationary) after the start of a Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive**

#### Disclaimer

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents.

**Bidding Program to beneficiaries residing in a Competitive Bidding Area (CBA) who are already receiving oxygen equipment from the grandfathered supplier.**

**Key Points of CR6934**

---

- If a beneficiary resides in a CBA, Medicare will pay claims for portable or stationary oxygen equipment that is acquired on or after the start of the Round One Rebid, at the single payment amount, when submitted by a grandfathered supplier, if the same supplier furnished stationary or portable oxygen equipment (grandfathered item), respectively, prior to the start of the Round One Rebid DMEPOS Competitive Bidding Program.
- If a beneficiary resides in a CBA, **claims will be denied** for portable or stationary oxygen equipment that is acquired on or after the start date for the Round One Rebid, **when submitted by a non-contract supplier, if the supplier did not furnish the portable or stationary oxygen equipment prior to the start of the National Competitive Bid Round One Rebid** (the portable or stationary oxygen equipment is not a grandfathered item).
- For oxygen equipment (stationary or portable) claims with dates of service on or after the start of the Round One Rebid, for a beneficiary residing in a CBA, claims will be denied when submitted by a grandfathered supplier, if the same grandfathered supplier did not furnish oxygen equipment (portable or stationary) prior to the start of the Round One Rebid (the items are not grandfathered).
- **Be aware that** a grandfathered supplier of oxygen and oxygen equipment cannot elect to grandfather stationary oxygen equipment and not portable oxygen equipment or vice versa. In accordance with the Medicare law and regulations, the Medicare monthly payment amount for stationary oxygen equipment includes payment for stationary oxygen equipment, stationary oxygen contents, and portable oxygen contents. If the supplier is also furnishing portable oxygen equipment, an add-on payment is made for the portable oxygen equipment only. Since payment for portable oxygen contents is included in the monthly payment amount for stationary oxygen equipment, the supplier must be a grandfathered supplier for both stationary and portable oxygen equipment in order to be in compliance with the statutorily mandated payment structure for oxygen and oxygen equipment. The grandfathered supplier that is grandfathering oxygen & oxygen equipment (that is, stationary or portable) to a beneficiary residing in a CBA is required to furnish any additional oxygen equipment (that is, portable or stationary) the beneficiary needs following the implementation of a competitive bidding program.

**Note:** “*Acquisition*” in the context of CMS business rules means that the beneficiary’s oxygen Certificate of Medical Necessity (CMN) initial date is prior to the start date for the DMEPOS Competitive Bidding Program Round One Rebid.

**Disclaimer**

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents.

## Background

---

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173) amended section 1847 of the Social Security Act (the Act) requires the Secretary to establish and implement programs (the “Medicare DMEPOS Competitive Bidding Program”) 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 Medicare Part B.

## Additional Information

---

If you have questions, please contact your Medicare 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 associated with this CR6934, issued to your Medicare MAC regarding this change may be viewed at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R718OTN.pdf> on the CMS website.

To review a complete listing of links to DME related information you may go to <http://www.cms.gov/Center/Provider-Type/Durable-Medical-Equipment-DME-Center.html> on the CMS website.

You may want to review MLN Matters® article MM8270 available at <http://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnmattersarticles/downloads/MM8270.pdf> which alerts DMEPOS providers to updated claims processing rules that apply to the grandfathering policies for oxygen and capped rental items included the Round One Recompete of the DMEPOS Competitive Bidding Program.

### Disclaimer

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents.