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National Competitive Bidding Program (CBP): Instructions for Processing CBP Oxygen and Capped Rental Durable Medical Equipment (DME) Claims with the Start of the Round One Recompete

Note: This article 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

Provider Types Affected

This MLN Matters® Article is intended for Medicare Durable Medical Equipment, Prosthetics, Orthotics, & Supplies (DMEPOS) suppliers who submit oxygen and capped rental DME claims to Durable Medical Equipment Medicare Administrative Contractors (DME MACs) for DME rental items and oxygen supplies provided to Medicare beneficiaries.

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Provider Action Needed

This article is based on Change Request (CR) 8270 which implements claims processing rules for grandfathering policies for oxygen and capped rental DME included in the Round One Recompete of DMEPOS (CBP).

Background

Section 302 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“Medicare Modernization Act” or “MMA”) established requirements for a new Competitive Bidding Program for certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS). Under the program, DMEPOS suppliers compete to become Medicare contract suppliers by submitting bids to furnish certain items in competitive bidding areas, and the Centers for Medicare & Medicaid Services (CMS) awards contracts to enough suppliers to meet beneficiary demand for the bid items. The new, lower payment amounts resulting from the competition replace the Medicare DMEPOS fee schedule amounts for the bid items in these areas. All contract suppliers must comply with Medicare enrollment rules, be licensed and accredited, and meet financial standards. The program sets more appropriate payment amounts for DMEPOS items while ensuring continued access to quality items and services, which will result in reduced beneficiary out-of-pocket expenses and savings to taxpayers and the Medicare program.

Under the MMA, the DMEPOS Competitive Bidding Program was to be phased in so that competition under the program would first occur in 10 Metropolitan Statistical Areas (MSAs) in 2007. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) temporarily delayed the program in 2008 and made certain limited changes. In accordance with MIPPA, CMS successfully conducted the supplier competition again in nine areas in 2009, referring to it as the Round 1 Rebid. The Round 1 Rebid contracts and prices became effective on January 1, 2011.

MIPPA also delayed the competition for Round 2 from 2009 to 2011 and authorized national mail-order competitions after 2010. The Affordable Care Act of 2010 (ACA) expanded the number of Round 2 MSAs from 70 to 91. Contracts and prices for Round 2 and the national mail-order program for diabetic testing supplies are scheduled to go into effect on July 1, 2013.

CMS is required by law to recompetete contracts for the DMEPOS Competitive Bidding Program at least once every three years. The Round 1 Rebid contract period for all product categories except mail-order diabetic supplies expires on December 31, 2013. (The Round 1 Rebid mail-order diabetic supply contracts expired on December 31, 2012.) CMS is conducting the Round 1 Recompetete in the same competitive bidding areas as the Round 1 Rebid.

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DMEPOS CBP Round One Recompete

CR8270 updates the claims processing rules to apply the grandfathering policies for oxygen and capped rental items included in the Round One Recompete of the DMEPOS CBP. As of January 1, 2014, when the Round One Recompete contracts and prices become effective, all contracts from the Round One Rebid will be expired.

As of that date, Round One Rebid suppliers are considered to be non-contract suppliers for the Round 1 CBAs unless they won contracts for the Round One Recompete. Non-contract suppliers that furnish rented durable medical equipment or oxygen may choose to become grandfathered suppliers and continue to rent DME to beneficiaries they are servicing when the program becomes effective. Beneficiaries have the choice to remain with their current supplier (if that supplier opts to become a grandfathered supplier or is a contract supplier) or to switch to a contract supplier.

Note: If a beneficiary (who would have been entitled to obtain items from a grandfathered supplier) switches to a contract supplier, the contract supplier is eligible to receive additional rental payments as provided in [42 CFR 414.408](#).

Grandfathering Provision

The Social Security Act (Section 1847(a)(4); see http://www.ssa.gov/OP_Home/ssact/title18/1847.htm on the Internet) requires that CMS establish a “grandfathering” process by which the rental agreement for those covered items and supply arrangements with oxygen suppliers entered into before the start of a competitive bidding program may be continued in the case of:

1. Covered DME items for which payment is made on a rental basis under the Social Security Act (Section 1834(a)); and
2. Oxygen for which payment is made under the Social Security Act (Section 1834(a)(5)).

This grandfathering provision provides the beneficiary the choice of receiving a grandfathered item from a grandfathered supplier or a contract supplier. In the event that 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), the new contract supplier will receive a certain number of additional monthly payments for furnishing the non-grandfathered item, regardless of how many payments Medicare previously made to the prior supplier.

In the case of capped rental DME, the new contract supplier will receive 13 additional monthly payments for the DME, provided the DME remains medically necessary. For oxygen equipment, the new contract supplier will receive at least 10 monthly rental payments. For example, if a contract supplier begins furnishing oxygen equipment to a beneficiary in months 2 through 26, Medicare would make payment for the remaining number of rental months in the 36-month rental period. However, should a contract supplier begin furnishing oxygen equipment to a beneficiary in months 27 through 35, Medicare would make 10 additional rental payments provided the equipment remains medically

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necessary. For oxygen equipment, the maximum number of payments may not exceed 45 rental payments

Scenarios

The following section describes possible scenarios for capped rental DME furnished during the Round One Recompete and subsequent rounds of the CBP:

Scenario 1 – The beneficiary was receiving items or services from a Round One Rebid contract supplier that **was awarded** a contract for the Round One Recompete and the **beneficiary chooses to stay with that supplier.**

In this case **the supplier IS NOT ENTITLED to any additional payments** since the beneficiary is not otherwise entitled to obtain the items from a grandfathered supplier.

Scenario 2 – The beneficiary was receiving items or services from a Round One Rebid contract supplier that **was not awarded** a contract for the Round One Recompete and the **beneficiary chooses to switch to a Round One Recompete contract supplier.**

In this case, **the new contract supplier IS ENTITLED to the additional payments** since the beneficiary is eligible to obtain the items from a grandfathered supplier.

Scenario 3 – The beneficiary was receiving items or services from a Round One Rebid contract supplier that **was not awarded** a contract for the Round One Recompete but **opted to become a grandfathered supplier**, and the **beneficiary chooses to remain with the grandfathered supplier.**

In this case, **the grandfathered supplier IS NOT ENTITLED to additional payments** since only contract suppliers are eligible for additional payments.

Scenario 4 – The beneficiary was receiving items or services from a Round One Rebid contract supplier that **was awarded** a contract for the Round One Recompete and the **beneficiary chooses to switch to a new contract supplier.**

In this case, **the contract supplier IS NOT ENTITLED to the additional payments** since the beneficiary is not otherwise entitled to obtain the items from a grandfathered supplier.

Additional Information

You can find out more about DMEPOS Competitive Bidding Program at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSCompetitiveBid/index.html> on the CMS website.

The official instruction, CR 8270 issued to your DME MAC regarding this change may be viewed at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R1219CP.pdf> on the CMS website.

If you have any questions, please contact your 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.

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