



# THE DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS, AND SUPPLIES (DMEPOS) COMPETITIVE BIDDING PROGRAM

## Grandfathering Requirements for Non-Contract Suppliers

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The Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (the Program) has expanded into numerous competitive bidding areas (CBAs) since January 1, 2011. The Centers for Medicare & Medicaid Services (CMS) is required by law to recompetete contracts under the Program at least once every three years.

When a round of the Program becomes effective in a CBA, beneficiaries with Original Medicare who obtain competitively bid items in that CBA must obtain these items from a contract supplier for that round for Medicare to pay, unless an exception, such as the grandfathering exception, applies.

All suppliers that are not awarded contracts to furnish competitively bid rented durable medical equipment (DME) or oxygen and oxygen equipment to beneficiaries in a CBA must:

1. Decide if they will elect to become grandfathered suppliers
2. Notify beneficiaries of their grandfathering decisions
3. Fulfill other requirements as described in this fact sheet

## What are grandfathered suppliers?

Suppliers that are not awarded a contract under the Program to furnish oxygen and oxygen equipment or rented DME have the option to continue renting these items to beneficiaries in CBAs to whom they are renting these items at the time the Program is implemented (i.e., when contracts for a given round of bidding take effect).

Non-contract suppliers that choose to continue renting these items are called “grandfathered” suppliers. Here are some important rules for non-contract suppliers to consider when deciding whether to become a grandfathered supplier:

- Once a supplier makes the decision to serve as a grandfathered supplier, the supplier must do so for all the beneficiaries to whom it is renting grandfathered items at the time the Program begins, to the extent that the beneficiary chooses to stay with the supplier. In other words, a grandfathered supplier must provide the grandfathering option to all of its eligible beneficiaries and cannot turn a beneficiary away if he or she elects to continue receiving the item from the grandfathered supplier.
- If a supplier decides to become a grandfathered supplier for a product category, its decision applies to all rented competitively bid items in that product category that the supplier currently provides.
- Non-contract suppliers can only become grandfathered suppliers for those items they are renting to beneficiaries residing in the CBA at the time the Program begins.
- A grandfathered supplier must accept assignment on all claims for grandfathered equipment furnished to beneficiaries in a CBA.
- Grandfathered suppliers may furnish competitively bid accessories and supplies used in conjunction with, and that are necessary for, the use of the grandfathered item. They will be paid the single payment amount established under the Program.
- The grandfathering provision also applies to beneficiaries who transition from a Medicare Advantage Plan.

## What are the notification requirements for a supplier that elects to grandfather?

- **Initial notification to beneficiaries**—A non-contract supplier that elects to become a grandfathered supplier must provide a 30-day written notification to each Medicare beneficiary who resides in a CBA and is currently renting competitively bid oxygen and oxygen equipment or DME from that supplier. These notifications must be sent at least 30 business days before the Program is implemented. Complete directions for notifying beneficiaries are available at <http://www.dmecompetitivebid.com> on the Competitive Bidding Implementation Contractor (CBIC) website.
- **Notifications to beneficiaries who decide to switch to a contract supplier**—If a beneficiary chooses to switch to a contract supplier, the current supplier must provide the beneficiary with two additional notices prior to picking up its equipment. The supplier must contact the beneficiary **10 business days prior to picking up the equipment and again 2 business days before the pick-up**. The non-contract supplier and contract supplier must coordinate the pick-up and delivery of the equipment with the beneficiary as discussed on pages 3 and 4.

## What are the notification requirements for a supplier that elects not to grandfather?

A non-contract supplier that elects not to become a grandfathered supplier is required to pick up the item it is currently renting to the beneficiary from the beneficiary's home after proper notification. Proper notification includes a 30-day, a 10-day, **and** a 2-day notice of the supplier's decision not to become a grandfathered supplier to its Medicare beneficiaries who are currently renting competitively bid DME or oxygen and oxygen equipment and who reside in a CBA.

- **Initial notification to beneficiaries**—The 30-day notification to the beneficiary must be sent at least 30 business days before the Program is implemented and must be in writing. Complete directions for notifying beneficiaries are available at <http://www.dmecompetitivebid.com> on the CBIC website.
- **Additional notifications to beneficiaries**—The non-contract supplier must provide the beneficiary with two additional notices prior to picking up its equipment. The non-contract supplier must contact the beneficiary **10 business days prior to picking up the equipment and again 2 business days before the pick-up**. The non-contract supplier and contract supplier must coordinate the pick-up and delivery of the equipment with the beneficiary as discussed below.

## What are the rules for transitioning a beneficiary from a non-contract supplier to a contract supplier?

If a Medicare beneficiary chooses to switch suppliers and obtain rental equipment from a new contract supplier instead of a grandfathered supplier OR if a non-contract supplier decides not to grandfather items that were rented at the time the Program is implemented, the current supplier and the new contract supplier must coordinate the pick-up and delivery of the equipment so that service to the beneficiary is not disrupted. The current supplier should provide all supporting documentation, such as the physician order or Certificate of Medical Necessity (CMN) when applicable, to the new contract supplier.

The pick-up and delivery should be on the first anniversary date that occurs after the Program's implementation (July 1, 2016, for Round 2 Reopen), or another date agreed to by the beneficiary. The anniversary date is the date of the month on which the item was first delivered to the beneficiary by the non-contract supplier. It is the date when a new monthly rental period begins.

### For example:

- If the anniversary date of the rental of the equipment is June 27 and the end date for the monthly rental period is July 26, the current supplier would pick up the old equipment on July 27, and the new contract supplier would deliver the new equipment on July 27.

- The current supplier should not pick up the equipment before the end of the last rental month for which that supplier is entitled payment. In this example, the current supplier should not pick up the equipment prior to July 27.

Under no circumstances may the supplier discontinue services by picking up a medically necessary item(s) prior to the end of a month for which the supplier is eligible to receive a rental payment, even if the last day of the rental month occurs after the Program's implementation.

Using this example, the current supplier should submit its last claim from June 27 to July 26. The new contract supplier should submit a claim from July 27, the date of delivery, to August 26.

## **What are the grandfathering policies specific to rented DME?**

### **Capped Rental DME**

- Grandfathered suppliers for capped rental DME are required to furnish the grandfathered item until ownership of the item is transferred to the beneficiary or the item is no longer medically necessary.
- When the Program first goes into effect in a CBA, grandfathered suppliers are paid the fee schedule amount established in the State where the beneficiary maintains permanent residency. When a new round of the Program is implemented for an item that is already a competitively bid item in the CBA, grandfathered suppliers are paid the new single payment amount.
- A new rental period begins if there is a break in medical necessity for more than 60 days plus the days remaining in the last paid rental month. When that occurs, a beneficiary must obtain new or additional equipment from a contract supplier.
- A beneficiary who would otherwise be entitled to receive rented equipment from a grandfathered supplier may elect to transition to a contract supplier at any time before the 13th month of continuous use. For capped rental items, the contract supplier would be paid for a new 13-month capped rental period and payment would be based on the single payment amount for the equipment.
- When a beneficiary switches from a contract supplier to another contract supplier, the new contract supplier is not entitled to a minimum number of months of payment and will be paid the single payment amount for the duration of the equipment rental period.

### **Inexpensive and Routinely Purchased (IRP) DME**

- Grandfathered suppliers for IRP items are required to furnish the grandfathered item for the remaining rental months, unless the item is no longer medically necessary.

- When the Program first goes into effect in a CBA, grandfathered suppliers are paid the fee schedule amount established in the State where the beneficiary maintains permanent residency. When a new round of the Program is implemented for an item that is already a competitively bid item in the CBA, grandfathered suppliers are paid the new single payment amount. Payments will continue until the item is no longer medically necessary or total payments for the item equal the fee schedule amount for the purchase of the IRP item.
- A beneficiary who would otherwise be entitled to receive IRP items from a grandfathered supplier may elect to transition to a contract supplier at any time during the rental period. Rental payments would continue for a medically necessary item until total payments equal 100 percent of the single payment amount for the purchase of the item.
- When a beneficiary switches from a contract supplier to another contract supplier, the new contract supplier is not entitled to a minimum number of months of payment and will be paid the single payment amount for the duration of the equipment rental period (i.e., until total payments equal 100 percent of the single payment amount for the purchase of the item).

## **What are the grandfathering policies specific to oxygen and oxygen equipment?**

- In general, suppliers that furnished oxygen and oxygen equipment to a beneficiary during the 36th month of continuous use are required by law to continue to furnish the equipment after the 36 months for any period of medical need during the remainder of the reasonable useful lifetime of the equipment. This requirement continues to apply under the Program, regardless of the role of the supplier (i.e., contract supplier, grandfathered supplier, or non-contract supplier not electing to be a grandfathered supplier). This obligation cannot be transferred to a contract supplier or any other supplier even in situations where a beneficiary relocates on a temporary or permanent basis outside the supplier's service area.
- Grandfathered suppliers that furnish oxygen and oxygen equipment will be paid the single payment amount for the relevant CBA.
- A beneficiary who would otherwise be entitled to receive oxygen or oxygen equipment from a grandfathered supplier may elect to transition to a contract supplier at any time before the 36th month of continuous use and the contract supplier would be required to accept the beneficiary as a customer. The contract supplier would be paid the duration of the 36-month rental period or at least 10 monthly rental payment amounts, whichever is greater.
- When a beneficiary switches from a contract supplier to another contract supplier, the new contract supplier is not entitled to a minimum number of months of payment and will be paid the single payment amount for the remaining months of the equipment rental period not to exceed 36 months of continuous use.

## Additional Information

For more information about the DMEPOS Competitive Bidding Program, visit <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSCompetitiveBid> on the CMS website.

Beneficiary-related information can be found at <https://www.medicare.gov> on the Internet.

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