

<b>CMS Manual System</b>	<b>Department of Health &amp; Human Services (DHHS)</b>
<b>Pub 100-20 One-Time Notification</b>	<b>Centers for Medicare &amp; Medicaid Services (CMS)</b>
<b>Transmittal 593</b>	<b>Date: November 6, 2009</b>
	<b>Change Request 6692</b>

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

**I. SUMMARY OF CHANGES:** This transmittal provides instructions to the shared system maintainers and the contractors for processing grandfathered oxygen competitive bid claims following a change in stationary or portable equipment modality under Round One of the Durable Medicare Equipment, Prosthetics, Orthotics and Supplies Competitive Bidding Program. It also updates the business requirements specified in Change Request 5487 for processing grandfathered competitive bid claims. (See Transmittal 1181, Pub. 100-04, issued on February 2, 2007.)

**NEW / REVISED MATERIAL**

**EFFECTIVE DATE:** \*April 1, 2010

**IMPLEMENTATION DATE:** April 5, 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/A	

**III. FUNDING:**

**SECTION A: For Fiscal Intermediaries and 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.

**IV. ATTACHMENTS:**

**One-Time Notification**

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

# Attachment – One-Time Notification

Pub. 100-20	Transmittal: 593	Date: November 6, 2009	Change Request: 6692
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**SUBJECT: Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program Round One Rebid Implementation--Phase 8B: Oxygen Modality**

**EFFECTIVE DATE:** April 1, 2010

**IMPLEMENTATION DATE:** April 5, 2010

## I. GENERAL INFORMATION

**A. Background:** In Change Request (CR) 6340, the Centers for Medicare and Medicaid Services (CMS) instructed the shared system maintainers, the CWF maintainer, the Regional Home Health Intermediaries (RHHIs), and the Durable Medical Equipment Medicare Administrative Contractors (DME MACs) to make changes to apply a 36-month cap on payments for stationary oxygen equipment, and a separate 36-month cap on payments for portable oxygen equipment regardless of how many different HCPCS codes are billed for a beneficiary during the rental period.

This CR provides instructions to the shared system maintainers and the contractors for processing grandfathered oxygen competitive bid claims following a change in stationary or portable equipment modality under Round One of the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program. It also updates the business requirements specified in CR 5487 for processing grandfathered competitive bid claims. (See Transmittal 1181, Pub. 100-04, issued on February 2, 2007.)

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 competitive bidding areas (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 shall 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 continuing to receive a grandfathered item from the grandfathered supplier that had been supplying the item or of receiving the item from 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 item’s 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. However, if a new period of continuous use begins in the event that the grandfathered oxygen equipment is lost, stolen, irreparably damaged or there is a break in need of greater than 60 days plus the days remaining in the last rental month during the 36-month rental period, the new or additional equipment furnished under the new period of continuous use must be obtained from a competitive bidding contract supplier. Grandfathering rules are outlined in 42 CFR 414.408(j). For additional information on the competitive bidding grandfathering rules, see CRs 4178 and 5918.

**B. Policy:**

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 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, 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.

Contractors shall implement the changes specified in this CR in preparation for the implementation of DMEPOS Competitive Bidding Program Round One Re-Bid implementation. The target implementation date for the Round One Rebid implementation is January 1, 2011 and is subject to change. CMS will notify the contractors of the actual start date for the Round One Rebid in a separate instruction.

In CR 5487, the CMS instructed contractors 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 contractors 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. Similar to the instructions provided in CR6340, no more than 45 total payments may be made for any single HCPCS code or any combination of HCPCS codes for both classes of oxygen equipment, i.e. stationary and portable oxygen equipment. The new oxygen competitive bid contract supplier is eligible to receive at least 10 monthly rental payments for both portable and stationary oxygen equipment. The business requirements contained in this CR replace business requirements 5487.12-5487.12.1.2 in CR 5487.

**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			
						F I S S	M C S	V M S	C W F	
6692.1	For stationary oxygen systems codes E0424, E0439, E1390, E1391, E1405, and E1406, contractors shall ensure that 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		X						X	X



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	
6692.3.1.6	In the situation described in 6692.3.1.3 above, the total number of maximum payments made for the portable oxygen equipment class may not exceed 45.								X	X	
6692.3.1.7	The contractors shall ensure that any change in the stationary oxygen equipment modalities or HCPCS codes (as specified in 6692.3.1.9) does not trigger a new 36-month rental period when billed on a claim for a non-grandfathered beneficiary during the maximum 45 month rental period.								X	X	
6692.3.1.8	The contractors shall ensure that any change in the portable oxygen equipment modalities or HCPCS codes (as specified in 6692.3.1.10) does not trigger a new 36-month rental period when billed on a claim for a non-grandfathered beneficiary during the maximum 45 month rental period.								X	X	
6692.3.1.9	The minimum 10 monthly rental payments specified in 6692.3.1.2 for stationary oxygen equipment apply to any one or any combination of the following HCPCS codes: E0424, E0439, E1390, E1391, E1405, and E1406.								X	X	
6692.3.1.10	The minimum 10 monthly rental payments specified in 6692.3.1.3 for portable oxygen equipment apply to any one or any combination of the following HCPCS codes: E0431, E0434, E1392, and K0738.								X	X	

### III. 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	
6692.4	A provider education article related to this instruction will be available at <a href="http://www.cms.hhs.gov/MLNMattersArticles/">http://www.cms.hhs.gov/MLNMattersArticles/</a> shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv. 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		X			X					

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	
	would benefit their provider community in billing and administering the Medicare program correctly.										

**IV. SUPPORTING INFORMATION**

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

Use "Should" to denote a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:
6692.1-3.1.10	The business requirements specified in this CR apply to DMEPOS competitive bidding claims, which are identified with the presence of a "Y" in the NCB indicator field.
6692.1-6692.2	Contractors shall apply the business requirements stated in CR 6340 to competitive bid claims for stationary and portable oxygen equipment.
6692.3-6692.3.1.10	These business requirements replace business requirements 5487.12-5487.12.1.2 in CR 5487. (See Transmittal 1181, Pub. 100-04, issued on February 2, 2007.)
6692.3.1.2-6692.3.1.3	Even though the supplier would ordinarily receive up to 36 payments for stationary oxygen equipment and up to 36 payments for portable oxygen equipment, under the DMEPOS Competitive Bidding Program, up to 45 payments may be made for stationary oxygen equipment and up to 45 payments may be made for portable oxygen equipment.

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

**V. CONTACTS**

**Pre-Implementation Contact(s):** For policy questions, please contact Karen Jacobs at [karen.jacobs@cms.hhs.gov](mailto:karen.jacobs@cms.hhs.gov) or at (410) 786-2173. For claims processing questions, please contact Susan Webster at [susan.webster@cms.hhs.gov](mailto:susan.webster@cms.hhs.gov) or at (410) 786-3384.

**Post-Implementation Contact(s):** For policy questions, please contact Karen Jacobs at [karen.jacobs@cms.hhs.gov](mailto:karen.jacobs@cms.hhs.gov) or at (410) 786-2173. For claims processing questions, please contact Susan Webster at [susan.webster@cms.hhs.gov](mailto:susan.webster@cms.hhs.gov) or at (410) 786-3384.

**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):**

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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.