

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-20 One-Time Notification	Centers for Medicare & Medicaid Services (CMS)
Transmittal 589	Date: November 2, 2009
	Change Request 6716

Subject: Continuation of Maintenance and Servicing Payments in CY 2010 for Certain Oxygen Equipment as a Result of the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008

I. SUMMARY OF CHANGES: This one-time update notice provides instructions for contractors to continue payments for maintenance and servicing visits for certain oxygen equipment, as instructed in Transmittal 497 (CR 6509), for dates of service through June 30, 2010.

New / Revised Material

Effective Date: January 1, 2010

Implementation Date: January 4, 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

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SUBJECT: Continuation of Maintenance and Servicing Payments in CY 2010 for Certain Oxygen Equipment as a Result of the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008

Effective Date: January 1, 2010

Implementation Date: January 4, 2010

I. GENERAL INFORMATION

A. Background:

Section 144(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) repeals the transfer of ownership provision established by the Deficit Reduction Act (DRA) of 2005 for oxygen equipment and establishes new payment rules and supplier responsibilities after the 36 month rental cap. Section 1834(a)(5)(F)(ii)(III) of the Act, as amended by section 144(b)(1) of the MIPPA, provides for payment for reasonable and necessary maintenance and servicing of oxygen equipment furnished after the 36-month rental cap if the Secretary determines that such payments are reasonable and necessary. Initial instructions relating to the maintenance and servicing payments for oxygen concentrators and transfilling equipment resulting from the implementation of section 144(b) of the MIPPA were issued in Transmittal 497, CR 6509, dated May 22, 2009. This one-time update provides instructions on the continuation of these maintenance and servicing payments for dates of service on or after January 1, 2010.

B. Policy:

Section 144(b) of MIPPA authorizes payment for reasonable and necessary maintenance and servicing of oxygen equipment furnished after the 36-month rental cap. The 36-month cap applies to stationary and portable oxygen equipment furnished on or after January 1, 2006; therefore, the 36-month cap may end as early as January 1, 2009, for beneficiaries using oxygen equipment on a continuous basis since January 1, 2006. As indicated in Transmittal 497, CR 6509, CMS determined that, for services furnished during calendar year 2009, it was reasonable and necessary to make payment for periodic, in-home visits by suppliers to inspect certain oxygen equipment and provide general maintenance and servicing after the 36-month rental cap. These payments only apply to equipment falling under HCPCS codes E1390, E1391, E1392, and K0738, and only when the supplier physically makes an in-home visit to inspect the equipment and provide any necessary maintenance and servicing. Payment may be made no more often than every 6 months, beginning 6 months after the 36-month rental cap (as early as July 1, 2009, in some cases), and the allowed payment amount for each visit is equal to 2 units of the 2009 fee for code K0739, for the State in which the in-home visit takes place.

Suppliers should use the HCPCS code for the equipment E1390, E1391, E1392 and/or K0738 along with the MS modifier in order to bill and receive payment for these maintenance and servicing visits. For example, if the supplier visits a beneficiary's home in Pennsylvania to perform the general maintenance and servicing on a portable concentrator, the supplier would enter E1392 MS on the claim and the allowed payment amount would be equal to the lesser of the supplier's actual charge or two units of the allowed payment amount for K0739 in

Pennsylvania. If the supplier visits the beneficiary's home to provide the periodic maintenance and servicing for a stationary concentrator (E1390 or E1391) and a transfilling unit (K0738), payment can be made for maintenance and servicing of both units (E1390MS or E1391MS, and K0738MS). If the supplier visits the beneficiary's home to provide the periodic maintenance and servicing for a portable concentrator (E1392), payment can only be made for maintenance and servicing of the one unit/HCPSC code (E1392MS).

For example, if maintenance and servicing is billed for a column I code, additional payment for the maintenance and servicing of any of the column II codes shall not be made.

Column I	Column II
E1390 MS	E1391 MS, E1392 MS
E1391 MS	E1390 MS, E1392 MS
E1392 MS	E1390 MS, E1391 MS, K0738 MS
K0738 MS	E1392 MS

For CY 2010, CMS has determined that it is reasonable and necessary to continue the existing payments and payment methodology, as described above and in Transmittal 497 (Change Request 6509), for maintenance and servicing of certain oxygen equipment for dates of service through June 30, 2010. For dates of service from January 1, 2010 through June 30, 2010, the allowed payment amount for each visit is equal to 2 units of the 2010 fee for code K0739, for the State in which the in-home visit takes place.

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 M A C	F I	C A R I E R	R H I	Shared-System Maintainers				OTH ER
						F I S S	M C S	V M S	C W F		
6716.1	Contractors shall pay claims with dates of service from July 1, 2009 thru June 30, 2010, for maintenance and servicing for oxygen concentrators no more often than every 6 months beginning 6 months after the end of the 36 th month of continuous use when billed with one of the following HCPCS codes and modifiers: E1390MS; E1391MS; or E1392MS.	X	X			X	X		X		
6716.1.1	In addition to payment for maintenance and servicing for stationary oxygen concentrators (HCPCS codes E1390 or E1391) under requirement 6716.1, contractors shall pay claims with dates of service from July 1, 2009 through June 30, 2010, for maintenance and servicing for portable oxygen transfilling equipment (HCPCS code K0738) no more often than every 6 months beginning 6	X	X			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 M A C	C A R R I E R	R H I I S S	Shared-System Maintainers				OTH ER
						F I S S	M C S	V M S	C W F		
	months after the end of the 36 th month of continuous use when billed with the HCPCS modifier MS.										
6716.1.2	Contractors shall not pay for maintenance and servicing of both a portable oxygen concentrator (E1392MS) and portable oxygen transfilling equipment (K0738MS).	X	X			X	X		X		
6716.1.3	For the oxygen equipment codes and modifier MS referenced in requirements 6716.1 and 6716.1.1, contractors shall make maintenance and servicing payments for covered services equal to the lesser of the supplier's actual charge or 2 units of K0739 every 6 months.	X	X			X	X		X		
6716.2	Contractors shall deny claims for maintenance and servicing of oxygen equipment when billed with the HCPCS codes E0424, E0439, E0431, E0434, E1405 or E1406 and the "MS" modifier.	X	X			X	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 M A C	C A R R I E R	R H I I S S	Shared-System Maintainers				OTH ER
						F I S S	M C S	V M S	C W F		
6716.3	<p>A provider education article related to this instruction will be available at http://www.cms.hhs.gov/MLNMattersArticles/ shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv.</p> <p>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</p>	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 M A C	C A R E R	R H I I S S	Shared-System Maintainers			
						F I S	M C S	V M S	C W F	
	are free to supplement MLN Matters articles with localized information that 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

X-Ref Requirement Number	Recommendations or other supporting information:

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

V. CONTACTS

Pre-Implementation Contact(s): Karen Jacobs (410)786-2173, Anita Greenberg (410)786-4601 and Chris Molling (410)786-6399

Post-Implementation Contact(s): Karen Jacobs (410)786-2173, Anita Greenberg (410)786-4601 and Chris Molling (410)786-6399

VI. FUNDING

Section A: For *Fiscal Intermediaries (FIs)*, *Regional Home Health Intermediaries (RHHIs)*, and/or *Carriers*, use only one of the following statements:

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)*, include the following statement:

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.