



OXYGEN: WHEN DO THE 36 MONTHS START OVER?

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INTRODUCTION

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- A new 36-month rental period can begin only in the following situations:
 - After the 5-year reasonable useful lifetime of the oxygen equipment has expired, if the beneficiary elects to obtain new oxygen equipment.
 - Previous supplier exits the Medicare oxygen business and abandons the patient.
 - Previous supplier files bankruptcy.

INTRODUCTION

- A new 36-month rental period can begin only in the following situations (cont'd):
 - Specific incident of damage beyond repair (e.g., dropped and broken, fire, flood, etc.) or the item is stolen or lost.
 - During 36-month rental payment period if break-in-need for at least 60 days plus the days remaining in the month of discontinuation and new medical necessity is established.



AFTER THE 5-YEAR REASONABLE USEFUL LIFETIME PERIOD HAS EXPIRED

AFTER 5-YEAR RUL HAS EXPIRED

- Reasonable useful lifetime for oxygen equipment is 5 years
 - At any time after the end of the 5-year reasonable useful lifetime for oxygen equipment, the beneficiary may elect to receive new equipment, thus beginning a new 36-month rental period.
- Five-year period begins on the initial date of service and runs for 5 years from that date. It is not based on the actual age of the equipment.

AFTER 5-YEAR RUL HAS EXPIRED

- It does not re-start if there has been a change in oxygen modality, change out of equipment, or change in supplier.
- When the RUL of a beneficiary's portable oxygen equipment differs from the RUL of the beneficiary's stationary oxygen equipment, the RUL of the stationary oxygen equipment shall govern for both types of oxygen equipment, stationary and portable.

AFTER 5-YEAR RUL HAS EXPIRED

- If the RUL end date of the portable oxygen equipment is before the RUL end date of the stationary oxygen equipment, the RUL end date of the portable oxygen equipment is extended to coincide with the RUL end date of the stationary oxygen equipment.
- If the RUL end date of the portable oxygen equipment is after the RUL end date of the stationary oxygen equipment, the end date of the RUL of the portable oxygen equipment is shortened to coincide with the RUL end date of the stationary oxygen equipment.

AFTER 5-YEAR RUL HAS EXPIRED

- When the end date of the RUL of the stationary oxygen equipment occurs, the beneficiary may elect to obtain replacement of both the stationary and the portable oxygen equipment.
- If the beneficiary elects to obtain replacement of the stationary and the portable oxygen equipment, both types of oxygen equipment must be replaced at the same time, and a new 36-month rental period and new RUL is started for both the replacement stationary oxygen equipment and the replacement portable oxygen equipment.

AFTER 5-YEAR RUL HAS EXPIRED

- A beneficiary who resides in a DMEPOS competitive bidding area (CBA) may obtain replacement of both the stationary and portable oxygen systems only from a contract supplier having a competitive bidding contract for the CBA in which the beneficiary permanently resides.

AFTER 5-YEAR RUL HAS EXPIRED

- If the beneficiary elects not to receive new equipment after the end of the 5-year reasonable useful lifetime and if the supplier retains title to the equipment, all elements of the payment policy for months 37-60 remain in effect. There is no separate payment for accessories or repairs. If the beneficiary was using gaseous or liquid oxygen equipment during the 36th rental month, payment can continue to be made for oxygen contents.

AFTER 5-YEAR RUL HAS EXPIRED

- If the beneficiary elects not to receive new equipment after the end of the 5-year reasonable useful lifetime and if the supplier transfers title of the equipment to the beneficiary, accessories, maintenance, and repairs are statutorily non-covered by Medicare. Contents are separately payable for beneficiary-owned gaseous or liquid systems.



ABANDONMENT OF OXYGEN PATIENTS

ABANDONMENT OF OXYGEN PATIENTS

- In late August 2013, CMS published the following announcement regarding “abandonment” of patients:
 - MLN Connects Provider eNews 08/22/13
 - Replacement of Home Oxygen Services in the Event that a Supplier Exits the Medicare Oxygen Business

ABANDONMENT OF OXYGEN PATIENTS

- In late August 2013, CMS published the following announcement regarding “abandonment” of patients (cont’d):
 - Effective immediately, CMS will allow for the replacement of oxygen equipment in cases where a supplier exits the Medicare oxygen business and is no longer able to continue furnishing oxygen and oxygen equipment. In these instances, the oxygen equipment will be considered lost and a new 36-month rental period and reasonable useful lifetime will begin for the new supplier furnishing replacement oxygen equipment on the date that the replacement equipment is furnished to the beneficiary.

ABANDONMENT OF OXYGEN PATIENTS

- In late August 2013, CMS published the following announcement regarding “abandonment” of patients (cont’d):
 - Suppliers exiting the Medicare oxygen business with patients that they were unable to transfer to new suppliers should be aware that they are in violation of the statutory and regulatory requirements for furnishing oxygen equipment both before and after the payment cap.

ABANDONMENT OF OXYGEN PATIENTS

- In late August 2013, CMS published the following announcement regarding “abandonment” of patients (cont’d):
 - As such, oxygen suppliers that do not fulfill their oxygen obligations and voluntarily exit the Medicare oxygen business are not in compliance with the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) supplier standards set forth at 42 CFR 424.57(c).

ABANDONMENT OF OXYGEN PATIENTS

- This is particularly relevant in the competitive bidding arena. A DME supplier may be motivated to walk away from its oxygen business after losing out on a competitive bid contract.
- Without the influx of new patients, the Medicare oxygen business can quickly become unprofitable.

ABANDONMENT OF OXYGEN PATIENTS

- Joint DME MAC article originally posted on 12/19/13 and revised 6/19/14 entitled “Supplier Exit from Oxygen Equipment Business.” The article provides the following:
 - In the event the DME supplier voluntarily exits the Medicare oxygen business and is no longer able to continue furnishing oxygen and oxygen equipment, then the oxygen equipment will be deemed to be “lost” under the Medicare regulations.

ABANDONMENT OF OXYGEN PATIENTS

- CMS intends to protect oxygen patients in the event their supplier walks away from the business, leaving the patients “abandoned” with nowhere to go for equipment, contents, or repairs.
- Allowing the 36-month rental period to restart by classifying the equipment as “lost” is an incentive for new suppliers to assume responsibility for the abandoned patients.

ABANDONMENT OF OXYGEN PATIENTS

- The regulations provide that a patient may elect to obtain a new piece of equipment if the equipment has been in continuous use by the patient for the equipment's reasonable and useful lifetime or has been lost, stolen or irreparably damaged. When considering "lost" equipment, the DME MACs will establish a new 36 month rental period and reasonable useful lifetime for the new supplier beginning on the date that the replacement equipment is furnished to the beneficiary.

ABANDONMENT OF OXYGEN PATIENTS

- The article reminds suppliers (voluntarily exiting the Medicare program) that they are in violation of their regulatory obligations. The regulations state that (i) subject to a few exceptions, the supplier that furnishes oxygen equipment in the first month must continue to furnish the equipment for the entire 36 month period of continuous use, unless medical necessity ends and (ii) the supplier that received the 36th month rental payment must continue furnishing the oxygen equipment during any period of medical need for the remainder of the equipment's reasonable useful life.

ABANDONMENT OF OXYGEN PATIENTS

- The article then states that oxygen suppliers that do not fulfill their oxygen obligations and voluntarily exit the Medicare oxygen business are not in compliance with the supplier standards.
- The article gives the following instructions to suppliers that are voluntarily exiting the Medicare oxygen market. These suppliers are strongly encouraged to provide a minimum of 30 days notice to the beneficiary of the supplier's intention to no longer provide oxygen therapy services.

ABANDONMENT OF OXYGEN PATIENTS

- The notice must be provided in writing and must take one of two forms:
 - (i) a letter to the beneficiary notifying him/her of the supplier's intention to discontinue oxygen therapy services; the letter must specify a date upon which this will occur; or
 - (ii) working with the beneficiary, a letter to the new supplier selected by the beneficiary that transfers the provision of oxygen therapy services to the new supplier as of a specific date.

ABANDONMENT OF OXYGEN PATIENTS

- The article then gives the following instructions to the new supplier that assumes responsibility for beneficiaries of suppliers that have elected to voluntarily exit the Medicare oxygen business. The claims for replacement equipment must:
 - i) include the RA modifier (replacement of a DME item) on the claim line for the replacement equipment, and
 - (ii) Document in the narrative field of the claim that "Beneficiary acquired through supplier voluntarily exiting Medicare program" or similar statement.

ABANDONMENT OF OXYGEN PATIENTS

- When submitting claims electronically, use loop 2400 (line note), segment NTE02 (NTE01+ADD) of the ASC X12, version 5010A1 electronic claim format.
- When billing using the Form CMS-1500 paper claim, include the narrative information in item 19 of the claim form.

ABANDONMENT OF OXYGEN PATIENTS

- In the event of an audit, suppliers should be prepared to provide documentation demonstrating that the beneficiary was transferred from a supplier exiting the Medicare oxygen program. Examples of documentation to meet this requirement include:
 - Copy of notice sent to the beneficiary from the old supplier indicating that the supplier's services were being terminated or
 - Letter from the old supplier to the new supplier indicating transfer of the beneficiary due to the voluntary exit from the Medicare program or
 - Attestation statement from the beneficiary indicating that the beneficiary (or their caregiver) has attempted to contact their existing supplier and has been unable to obtain service.

ABANDONMENT OF OXYGEN PATIENTS

- The article further states that if the new supplier is unable to obtain the required documentation, then the new supplier may not append the RA modifier to the claim and may not initiate a new 36 month capped rental period.
- Lastly, the article reminds all suppliers (accepting transfers of beneficiaries) that all Medicare documentation rules apply.

ABANDONMENT OF OXYGEN PATIENTS

- These announcements are meant to deter DME suppliers, that provide DME products in addition to oxygen equipment, from voluntarily leaving the Medicare oxygen business without fulfilling their oxygen obligations to patients.
- The “deterrence” is CMS’ statement that such abandonment is a violation of the DMEPOS supplier standards, which could lead to the revocation of the DME company’s Medicare supplier number.

ABANDONMENT OF OXYGEN PATIENTS

- What if the exiting supplier sells its business (or oxygen assets) to another supplier?
- In a bona fide asset sale, the asset sale allows for the continuation of patient support and service by the buyer; therefore there is no abandonment.
- It is B&F's position that a supplier, that assumes responsibility for patients who transfer to the supplier pursuant to a bona fide asset sale, is not eligible to restart the 36 month rental for such patients.

ABANDONMENT OF OXYGEN PATIENTS

- If a physician charges an initial consultation fee that covers all necessary medications, and the physician nevertheless faxes a patient-specific prescription to the pharmacy , and the pharmacy mails the drug directly to the patient, then can the pharmacy technically bill the physician for those orders?
- This scenario would be a problem because the drugs would not be considered “in office” use, if they are being mailed directly to the patient.

ABANDONMENT OF OXYGEN PATIENTS

- The “take away” for the DME supplier exiting the market is that if it can sell its business to another supplier, thereby insuring the orderly transition of oxygen patients, then that is the preferable course of action to take.
- If the exiting supplier cannot find a buyer for its business, then it needs to give the required advance notice to the beneficiary.

ABANDONMENT OF OXYGEN PATIENTS

- The “take away” for the new supplier that intends to start a new 36 month cap period is that the supplier needs to properly submit the claim and obtain the necessary documentation to withstand an audit.



OXYGEN PATIENTS OF BANKRUPT DME SUPPLIER

OXYGEN PATIENTS OF BANKRUPT DME SUPPLIER

- Competitive bidding is forcing a number of DME suppliers to close their doors. Some of these suppliers are filing bankruptcy.

OXYGEN PATIENTS OF BANKRUPT DME SUPPLIER

- The guidance issued by CMS related to payment for replacement oxygen equipment in bankruptcy situations is contained in Section 50.4 of [Chapter 20 in the Medicare Claims Processing Manual](#). It states that “when a supplier files for Chapter 7 or 11 bankruptcy ... and cannot continue to furnish oxygen to its Medicare beneficiaries, the oxygen equipment is considered lost in these situations and payment may be made for replacement equipment. For replacement oxygen equipment, a new reasonable useful lifetime period and a new 36 month payment period begins on the date of delivery of the replacement oxygen equipment.”

OXYGEN PATIENTS OF BANKRUPT DME SUPPLIER

- The supporting documentation that will be required to verify that the supplier declared bankruptcy depends on whether the bankruptcy is a Chapter 7 (liquidation) or a Chapter 11 (reorganization). For a Chapter 7, the “supporting documentation must include court records documenting that the previous supplier filed a petition for a Chapter 7 bankruptcy in a United States Bankruptcy Court ...”

OXYGEN PATIENTS OF BANKRUPT DME SUPPLIER

- For a Chapter 11, the “supporting documentation must include Court records documenting that the previous supplier filed a petition for a Chapter 11 bankruptcy in a United States Bankruptcy Court; and documents filed in the bankruptcy case confirming that the equipment was sold or is scheduled to be sold as evidenced by one of the following:
 - [1] The Court order authorizing and/or approving the sale; or
 - [2] Supporting documentation that the sale is scheduled to occur or has occurred, e.g., a bill of sale, or an asset purchase agreement signed by the seller and the buyer; or
 - [3] A Court order authorizing abandonment of the equipment.”

OXYGEN PATIENTS OF BANKRUPT DME SUPPLIER

- Because this policy contemplates the establishment a new reasonable useful lifetime, it should allow for a new 36 month payment period regardless of whether a patient of the bankrupt supplier was still in the 36 month rental payment period or the non-rental payment period consisting of rental months 37-60.

OXYGEN PATIENTS OF BANKRUPT DME SUPPLIER

- As with any other situation in which oxygen equipment is lost and replacement equipment is furnished, the RA modifier must be submitted on the claim and a narrative explanation should be included on the claim.
- In addition, the new supplier must obtain the necessary qualifying documentation, including the blood gas testing results, a new order and/or CMN, and proof of delivery.



**SPECIFIC INCIDENT OF
DAMAGE BEYOND REPAIR
(E.G., DROPPED AND
BROKEN, FIRE, FLOOD,
ETC.) OR THE ITEM IS
STOLEN OR LOST**

LOST, STOLEN, OR INCIDENT RESULTING IN DAMAGE BEYOND REPAIR

- A specific incident of damage to equipment is required such as equipment falling down a flight of stairs, as opposed to equipment that is worn out over time.
- New 36-month cap rental period cannot be started if equipment is replaced due to malfunction, wear and tear, routine maintenance or repair needed.

LOST, STOLEN, OR INCIDENT RESULTING IN DAMAGE BEYOND REPAIR

- A new 36-month rental period and new reasonable useful lifetime is started on the date that the replacement equipment is furnished to the beneficiary.
- Claims for the replacement of oxygen equipment for the first month of use only are billed using the HCPCS code for the new equipment and the RA modifier.

LOST, STOLEN, OR INCIDENT RESULTING IN DAMAGE BEYOND REPAIR

- You must include on the claim for the first month of use a narrative explanation of the reason why the equipment was replaced and supporting documentation must be maintained in your files. For example, if equipment was stolen, you should keep a copy of the police report in your files. For lost or irreparably damaged equipment, you should maintain any documentation that supports the narrative account of the incident.
- AFTER expiration of the 36-month cap rental period, supplier of oxygen equipment must continue providing oxygen contents to the beneficiary during ANY period of medical need for the remainder of the 5-year reasonable useful lifetime of the equipment.

REPLACEMENT EQUIPMENT

- Initial CMN and claim for replacement equipment
 - Initial Date should be the date of delivery of the replacement oxygen equipment.
 - Claims for the initial rental month (and only the initial rental month) must have the RA modifier (Replacement of DME item) added to the HCPCS code for the equipment when there is replacement due to reasonable useful lifetime or replacement due to damage, theft, or loss.
 - Claims for the initial rental month must include a narrative explanation of the reason why the equipment was replaced and supporting documentation must be maintained in the supplier's files.

REPLACEMENT EQUIPMENT

- Recert CMN for replacement equipment
 - Repeat testing is not required. Enter the most recent qualifying value and test date. This test does not have to be within 30 days prior to the Initial Date. It could be the test result reported on the most recent prior CMN.
 - There is no requirement for a physician visit that is specifically related to the completion of the CMN for replacement equipment.



DURING 36-MONTH CAP PERIOD AFTER 60-PLUS DAY BREAK IN MEDICAL NEED

DURING 36-MONTH CAP PERIOD AFTER 60-PLUS DAY BREAK IN MEDICAL NEED

- If beneficiary enters hospital or SNF or joins Medicare HMO and continues to need/use oxygen, when beneficiary returns home or rejoins Medicare FFS, payment resumes where it left off.
- If need/use of oxygen ends for less than 60 days plus the remainder of the rental month of discontinuation and then resumes, payment resumes where it left off.

DURING 36-MONTH CAP PERIOD AFTER 60-PLUS DAY BREAK IN MEDICAL NEED

- During the 36-month rental period, if need/use of oxygen ends for more than 60 days plus the remainder of the rental month of discontinuation and new medical necessity is established, a new 36 month rental period would begin.
 - New Initial CMN - The blood gas study must be the most recent study obtained within 30 days prior to the Initial Date.
 - The beneficiary must be seen and evaluated by the treating physician within 30 days prior to the date of Initial Certification.

DURING 36-MONTH CAP PERIOD AFTER 60-PLUS DAY BREAK IN MEDICAL NEED

- If there is an interruption in medical necessity of greater than 60 days plus the days remaining in the last paid rental month, once the need resumes, the supplier would collect supporting documentation (made available upon request) of the new medical need including, but not limited to:
 - New prescription (detailed written order, WOPD if required)
 - New Initial CMN (with new qualifying oxygen test results performed within 30 days of new initial date)

DURING 36-MONTH CAP PERIOD AFTER 60-PLUS DAY BREAK IN MEDICAL NEED

- Cont'd:
 - Documentation supporting new medical need
 - Documentation explaining interruption of need
 - Documentation supporting length of interruption (e.g., pick up date, new delivery date)
- The claim for the first month of the new rentals meeting the above documentation should include:
 - New Initial CMN
 - Narrative statement, "Break in medical need greater than 60 days."

DURING 36-MONTH CAP PERIOD AFTER 60-PLUS DAY BREAK IN MEDICAL NEED

- During months 37-60, if need/use of oxygen ends for more than 60 days plus the remainder of the rental month of discontinuation and new medical necessity is established, a new rental period does not begin. The supplier who provided the oxygen equipment during the 36th rental month must provide all necessary items and services for the duration of the reasonable useful lifetime.



AFFORDABLE CARE ACT 6407 WOPD AND FACE-TO- FACE REQUIREMENTS

ACA 6407 REQUIREMENTS

- Applicable to the following items: E0424, E0431, E0433, E0434, E0439, E0441, E0442, E0443, E0444.
- These items require an in-person or face-to-face interaction between the beneficiary and their treating physician within 6 months prior to prescribing the item, specifically to document that the beneficiary was evaluated and/or treated for a condition that supports the need for the item(s) of DME ordered. A dispensing order or detailed written order is not sufficient to provide these items. A Written Order Prior to Delivery (WOPD) is required.

ACA 6407 REQUIREMENTS

- Note that WOPDs also require the prescriber's National Provider Identifier (NPI) to be included on the order.

ACA 6407 REQUIREMENTS

- A new face-to-face examination is required each time a new prescription for one of the specified items is ordered. A new prescription is required by Medicare:
 - For all claims for purchases or initial rentals.
 - When there is a change in the prescription for the accessory, supply, drug, etc.
 - If a local coverage determination (LCD) requires periodic prescription renewal (i.e., policy requires a new prescription on a scheduled or periodic basis).
 - When an item is replaced.
 - When there is a change in the supplier.
 - When required by state law.

ACA 6407 REQUIREMENTS

- The face-to-face examination must be within 6 months prior to the date of the WOPD.



CMS CHANGE REQUEST 9886 EFFECTIVE 4/24/17

CR 9886

- The purpose of the change is to instruct contractors to accept timely orders and medical documentation, regardless of whether the supplier received the documentation directly from the beneficiary's eligible practitioner or from another, transferring supplier.
- This change allows the new supplier to obtain a copy of a valid written order from the old supplier, instead of having to obtain a new written order from the practitioner.

CR 9886

- Medicare Program Integrity Manual, Chapter 5, §5.2.7 is amended to read:

A new order is required in the following situations:

There is a change in the order for the accessory, supply, drug, etc;

On a regular basis (even if there is no change in the order) only if it is so specified in the documentation section of a particular medical policy;

When an item is replaced; and

When there is a change in the supplier, *if the recipient supplier did not obtain a valid order for the DMEPOS item from the transferring supplier.*



QUESTIONS?





THANK YOU

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