

<b>CMS Manual System</b>	<b>Department of Health &amp; Human Services (DHHS)</b>
<b>Pub 100-04 Medicare Claims Processing</b>	<b>Centers for Medicare &amp; Medicaid Services (CMS)</b>
<b>Transmittal 1120</b>	<b>Date: NOVEMBER 24, 2006</b>
	<b>Change Request 5370</b>

**SUBJECT: Additional Provider Education for Upcoming Changes in Payment for Oxygen Equipment and Capped Rentals for Durable Medical Equipment (DME) Based on the Deficit Reduction Act (DRA) of 2005**

**I. SUMMARY OF CHANGES:** This document provides further provider education on forthcoming changes in capped rental DME and Oxygen payments as a result of the DRA.

**New/Revised Material**

**Effective Date: January 1, 2007**

**Implementation Date: January 2, 2007**

*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
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**III. FUNDING:**

No additional funding will be provided by CMS; Contractor activities are to be carried out within their FY 2007 operating budgets.

**IV. ATTACHMENTS:**

**One-Time Notification**

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

# Attachment – One-Time Notification

Pub. 100-04	Transmittal: 1120	Date: November 24, 2006	Change Request: 5370
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**SUBJECT: Additional Provider Education for Upcoming Changes in Payment for Oxygen Equipment and Capped Rentals for Durable Medical Equipment (DME) Based on the Deficit Reduction Act (DRA) of 2005**

**NOTE: A final rule has not yet been published on the subject of this Change Request (CR). Although some of the statutory provisions (i.e., the length of payment caps) are self-implementing, some aspects of this instruction may change with the publication of the final rule. Therefore, this CR is for planning purposes only.**

**Effective Date:** January 1, 2007

**Implementation Date:** January 2, 2007

## **I. GENERAL INFORMATION**

**A. Background:** Recent legislative changes mandated by Sections 5101(a) and 5101(b) of the Deficit Reduction Act (DRA) of 2005 mandate changes in the way Medicare makes payment for certain items of DME.

On April 28, 2006, CMS published CR 5010, Provider Education for Upcoming Changes in Payment for Oxygen Equipment and Capped Rentals for Durable Medical Equipment (DME) Based on the Deficit Reduction Act of 2005. On November 9, 2006, CMS published a Final Rule entitled “Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2007 and Deficit Reduction Act of 2005 Changes to Medicare Payment for Oxygen Equipment and Capped Rental Durable Medical Equipment; Final Rule”.

The DRA provisions and associated regulations will begin to impact capped rental claims as of February 2007. CMS is instructing its DME Regional Carriers (DMERCs) and DME Medicare Administrative Contractors (DME MACs) to publish another educational article to better prepare the supplier community.

## **B. Policy:**

### **Payments for Capped Rental DME**

Prior to the enactment of the DRA, suppliers of capped rental items were paid on a rental or purchase option basis. Payment for DME items in the capped rental category was made on a monthly rental basis, with rental payments being capped at 15 months or 13 months, depending on whether the beneficiary chose to continue renting the item or to take ownership of the item through the “purchase option.” For all capped rental items, the supplier was required to inform the beneficiary during the 10th rental month of the “purchase option”, to enter into a purchase agreement under which the supplier would transfer title to the item to the beneficiary on the first day after the 13th continuous month during which payment was made for the rental of the item. If the beneficiary chose the purchase option, rental payments would continue through the 13th month of continuous use of the equipment, after which time title to the equipment would transfer to the beneficiary. In cases where the beneficiary did not choose the purchase option, rental payments continued through the 15th month of continuous use. In these cases, suppliers would

maintain title to the equipment but would have to continue furnishing the item to the beneficiary as long as medically necessity continued.

Section 5101(a) revises the payment rules described above for capped rental DME. In accordance with the DRA, after 13 months, the beneficiary owns the capped rental DME item, and after that time, Medicare pays for reasonable and necessary maintenance and servicing (i.e., for parts and labor not covered by a supplier's or manufacturer's warranty) of the item. The beneficiary may not, as in years past, choose to continue to rent the item and leave the supplier with the title to the item. The supplier must follow applicable state and federal laws when transferring title for the item to the beneficiary. This transfer must occur on the first day after the last rental month. The provision applies to items for which the first rental month occurs on or after January 1, 2006.

This provision does not affect parenteral nutrition (PEN) pumps, because PEN is not considered to be capped rental DME, but rather is covered under the prosthetic benefit.

Moreover, beneficiaries may still elect to obtain power-driven wheelchairs on a lump-sum purchase agreement basis. Should the beneficiary choose not to obtain the power-driven wheelchair on a lump sum purchase basis, title to the wheelchair will still transfer to the beneficiary after 13 continuous rental months have been paid.

Capped rental items furnished to beneficiaries prior to January 1, 2006, will continue to be paid under the payment rules in effect prior to the DRA changes.

### **Payments for Oxygen Equipment**

Before the enactment of the DRA, monthly payments for oxygen equipment continued for the duration of use of the equipment, regardless of the number of months the equipment was in use, provided that Medicare Part B coverage and eligibility criteria were met. However, DRA Section 5101(b) limits the total number of continuous rental months for which Medicare will pay for oxygen equipment to 36 months. After the 36th month, the supplier must transfer title to the oxygen equipment so that the beneficiary will own it. The supplier must follow applicable state and federal laws when transferring title for the item to the beneficiary. This transfer must occur on the first day after the last rental month.

Section 5101(b) of the DRA specifically provided that Medicare will continue to pay for oxygen contents (i.e., oxygen, regardless of modality) for beneficiary-owned stationary or portable gaseous or liquid systems. Payment for oxygen contents will continue to be made as long as the oxygen remains medically necessary. The DRA further stipulates that payment for reasonable and necessary maintenance and servicing of beneficiary-owned oxygen equipment will be made for parts and labor that are not covered by a supplier's or manufacturer's warranty. This provision is effective January 1, 2006. For beneficiaries receiving oxygen equipment on December 31, 2005, the 36-month rental period begins on January 1, 2006, regardless of how many months rental has been paid prior to January 1, 2006.

## II. BUSINESS REQUIREMENTS

Use "Shall" to denote a mandatory requirement

Number	Requirement	Responsibility (place an "X" in each applicable column)										
		A / B	D M E	F I	C A R R I E R	D M R C	R H R I	Shared-System Maintainers				OTHER
		M A C	M A C					F I S S	M C S	V M S	C W F	
	None.											

## III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)										
		A / B	D M E	F I	C A R R I E R	D M R C	R H R I	Shared-System Maintainers				OTHER
		M A C	M A C					F I S S	M C S	V M S	C W F	
5370.1	<p>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.</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 are free to supplement MLN Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.</p>		X				X					

## IV. SUPPORTING INFORMATION

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

Use "Should" to denote a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:
CR 5010	This CR contained the first provider education instruction related to these provisions.

**B. For all other recommendations and supporting information, use the space below:**

**V. CONTACTS**

**Pre-Implementation Contact(s):** Renée Hildt at (410) 786-1446 or [renee.hildt@cms.hhs.gov](mailto:renee.hildt@cms.hhs.gov) ; Joel Kaiser at (410) 786-4499 or [joel.kaiser@cms.hhs.gov](mailto:joel.kaiser@cms.hhs.gov)

**Post-Implementation Contact(s):** Appropriate Regional Office

**VI. FUNDING**

**A. For TITLE XVIII Contractors, use only one of the following statements:**

No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2007 operating budgets.

**B. For Medicare Administrative Contractors (MAC), use only one of the following statements:**

The contractor is hereby advised that this constitutes technical direction as defined in your contract. We do not construe this as a change to the Statement of Work (SOW). The contractor is not obligated to incur costs in excess of the amounts specified 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.