

<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 688</b>	<b>Date: April 29, 2010</b>
	<b>Change Request 6934</b>

**SUBJECT: Durable Medical Equipment National Competitive Bidding Implementation – Phase 10G: Paying for Oxygen Equipment when Grandfathered**

**I. SUMMARY OF CHANGES:** A non-contract supplier who chose to be a grandfathered supplier for oxygen and oxygen equipment (i.e., portable or stationary) must also furnish additional oxygen equipment when medically necessary (i.e., portable or stationary) after the start of a DMEPOS Competitive Bidding Program to beneficiaries residing in a CBA who are already receiving oxygen equipment from them. This Change Request instructs the Durable Medical Equipment Medicare Administrative Contractors (DME MAC) and the ViPS Medicare System (VMS) shared system maintainer to establish programming to allow payment for oxygen equipment (portable or stationary) claims submitted by a non-contract supplier, furnished to a beneficiary who resides in a competitive bidding area after the start of the DMEPOS Competitive Bidding Program Round One Rebid, when the same supplier furnished an item of oxygen equipment to the beneficiary prior to the start of the Round One Rebid (the items are grandfathered).

**EFFECTIVE DATE: October 1, 2010**

**IMPLEMENTATION DATE: October 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/revise 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.

<b>R/N/D</b>	<b>CHAPTER / SECTION / SUBSECTION / TITLE</b>
N/A	

**III. FUNDING:**

**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.

**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: 688	Date: April 29, 2010	Change Request: 6934
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**SUBJECT: Durable Medical Equipment National Competitive Bidding Implementation – Phase 10G: Paying for Oxygen Equipment when Grandfathered**

**Effective Date:** October 1, 2010

**Implementation Date:** October 4, 2010

## I. GENERAL INFORMATION

**A. Background:** Section 302(b)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173) amended Section 1847 of the Social Security Act (the Act) to require the Secretary to establish and implement programs (the “Medicare DMEPOS Competitive Bidding Program”) 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 Medicare Part B.

Section 1847(a)(4) of the Act requires that in the case of covered Durable Medical Equipment (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 the DME covered items and oxygen are entered into before the start of the competitive bidding program may be continued. This grandfathering provision provides the beneficiary the choice of receiving the covered item from a grandfathered supplier. Once the beneficiary receives the oxygen equipment (i.e. portable or stationary) from the grandfathered supplier, that supplier must also furnish any additional oxygen equipment (i.e. portable or stationary) that the National Competitive Bidding (NCB) beneficiary needs following the implementation of a Competitive Bidding Program.

According to 42 CFR 414.402, *Grandfathered item* means all rented items within a product category for which payment was made prior to the implementation of a competitive bidding program to a grandfathered supplier that chooses to continue to furnish the items in accordance with 42 CFR 414.408(j) and that fall within the following payment categories for competitive bidding: (1) An inexpensive or routinely purchased item described at 42 CFR 414.220,. (2) An item requiring frequent and substantial servicing, as described at 42 CFR 414.222,. (3) Oxygen and oxygen equipment described at 42 CFR 414.226, and (4) Other DME described at 42 CFR 414.229.

This transmittal instructs the Durable Medical Equipment Medicare Administrative Contractors (DME MAC) and the ViPS Medicare System (VMS) shared system maintainer to establish programming to require a non-contract supplier who chose to be a grandfathered supplier for oxygen & oxygen equipment (i.e., portable or stationary) to also furnish additional oxygen equipment when medically necessary (i.e., portable or stationary) after the start of a DMEPOS Competitive Bidding Program to beneficiaries residing in a CBA who are already receiving oxygen equipment from them.

Contractors shall implement the changes specified in this CR in preparation for the DMEPOS Competitive Bidding Program Round One Rebid implementation. The target implementation date for the Round One Rebid 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.

**NOTE:** The group codes, remittance advice messages and Medicare Summary Notice messages to be used for claims denials under the Round One Rebid will be provided in a subsequent CR.

**B. Policy:** A supplier of oxygen and oxygen equipment cannot choose to grandfather stationary oxygen and oxygen equipment and not portable equipment or vice versa. In accordance with the Medicare law and regulations, the Medicare monthly payment amount for oxygen and oxygen equipment includes payment for stationary oxygen equipment, stationary oxygen contents, and portable oxygen contents. If the supplier is also furnishing portable oxygen equipment, an add-on payment is made for portable oxygen equipment only. Since payments for portable oxygen contents is included in the monthly payment amount for oxygen and oxygen equipment while payments for portable oxygen equipment is included in the add-on payment, the supplier must be a grandfathered supplier for both stationary and portable oxygen and oxygen equipment in order to be in compliance with the statutorily mandated payment structure for oxygen and oxygen equipment. The grandfathered supplier that is grandfathering oxygen & oxygen equipment (i.e. stationary or portable) to a beneficiary residing in a CBA is required to furnish any additional oxygen equipment (i.e. stationary or portable) the beneficiary needs following the implementation of a competitive bidding program.

**NOTE:** “Acquisition” in the content of our business rules means that the beneficiary’s oxygen Certificate of Medical Necessity (CMN) initial date is prior to the start date for the DMEPOS Competitive Bidding Program Round One Rebid.

**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 R E R	C A R I E R	R H H I	Shared-System Maintainers			
						F I S S	M C S	V M S	C M W F	
6934.1	For a beneficiary residing in a CBA, contractors shall pay claims for portable oxygen equipment that is acquired on or after the start of the Round One Rebid, at the single payment amount, when submitted by a non-contract supplier, if the same supplier furnished the stationary oxygen equipment (grandfathered item) prior to the start of the Round One Rebid.		X						X	
6934.2	For a beneficiary residing in a CBA, contractors shall deny claims for portable oxygen equipment that is acquired on or after the start date for the Round One Rebid, when submitted by a non-contract supplier, if the supplier did not furnish the stationary oxygen equipment prior to the start of the National Competitive Bid Round One Rebid (the stationary oxygen equipment is not a grandfathered item).		X						X	
6934.3	For a beneficiary residing in a CBA, contractors shall pay claims for stationary oxygen equipment that is acquired on or after the start of the Round One Rebid, at the single payment amount, when submitted by a non-contract		X						X	

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B	D M E	F I	C A R R I E R	R H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	supplier, if the same supplier furnished the portable oxygen equipment (grandfathered item) prior to the start of the Round One Rebid.										
6934.4	For a beneficiary residing in a CBA, contractors shall deny claims for stationary oxygen equipment that is furnished after the start of the Round One Rebid, when submitted by a non-contract supplier, if the supplier did not furnish the portable oxygen equipment prior to the start of the Round One Rebid (the portable oxygen equipment is not a grandfathered item).		X						X		
6934.5	For oxygen equipment (stationary or portable) claims with dates of service on or after the start of the Round One Rebid, for a beneficiary residing in a CBA, contractors shall pay claims at the single payment amount, when submitted by any enrolled Medicare supplier, if the item(s) were furnished prior to the start of the Round One Rebid.  <b>NOTE:</b> Contractors shall allow payment regardless of whether the supplier is a contract, a non-contract, or a grandfathered supplier under the DMEPOS Competitive Bidding Program.		X						X		
6934.6	For oxygen equipment (stationary or portable) claims with dates of service on or after the start of the Round One Rebid, for a beneficiary residing in a CBA, contractors shall deny claims, when submitted by a non-contract supplier, if the same supplier did not furnish an item of oxygen equipment prior to the start of the Round One Rebid (the items are not grandfathered).		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	
6934.7	<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								

### 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:
6934.1, 6934.3, and 6934.5	Contractors shall pay claims at the single payment amount for the CBA in which the beneficiary resides.

**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 (410) 786-2173 or [Karen.Jacobs@cms.hhs.gov](mailto:Karen.Jacobs@cms.hhs.gov). For claims processing questions please contact Wendy Knarr at [Wendy.Knarr@cms.hhs.gov](mailto:Wendy.Knarr@cms.hhs.gov).

**Post-Implementation Contact(s):** For policy questions please contact Karen Jacobs at (410) 786-2173 or [Karen.Jacobs@cms.hhs.gov](mailto:Karen.Jacobs@cms.hhs.gov). For claims processing questions please contact Wendy Knarr at [Wendy.Knarr@cms.hhs.gov](mailto:Wendy.Knarr@cms.hhs.gov).

## **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)*:**

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.