

Grandfathering for Oxygen and Oxygen Equipment

Suppliers that are not awarded a competitive bidding contract for furnishing oxygen and oxygen equipment or rented durable medical equipment (DME) in a competitive bidding area (CBA) can decide to be grandfathered suppliers for beneficiaries to whom they are furnishing these items at the time the Competitive Bidding Program is implemented (i.e., when contracts for a given round of bidding take effect). Any beneficiary in a CBA who is receiving oxygen and oxygen equipment from a noncontract supplier that elects to be a grandfathered supplier at the time the Competitive Bidding Program is implemented may elect to continue to receive the item from the grandfathered supplier or begin receiving the item from a contract supplier. A grandfathered supplier cannot turn away a beneficiary if he or she elects to continue receiving the item from the grandfathered supplier.

Here are some important points about grandfathering for oxygen and oxygen equipment for suppliers to consider when preparing their bids:

- The Medicare law requires that the supplier that furnishes the oxygen and oxygen equipment during the 36th month of continuous use must continue to furnish the oxygen and oxygen equipment after the cap for any period of medical need for the remainder of the reasonable useful lifetime of the equipment. The obligation to continue furnishing the oxygen and oxygen equipment cannot be transferred to a contract supplier. This requirement continues to apply under the Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program, regardless of the role of the supplier (i.e., contract supplier, grandfathered supplier, or non-contract supplier not electing to become a grandfathered supplier). It is important to know that this requirement applies even in situations where the beneficiary relocates on a temporary (i.e., snowbird) or permanent basis outside the supplier's normal service area. The supplier that furnishes the oxygen or oxygen equipment in the 36th month of continuous use is prohibited from transferring its ongoing obligations to a contract supplier, regardless of whether it has elected to become a grandfathered supplier and regardless of whether the beneficiary remains in the competitive bidding area (CBA).
- The grandfathering option only applies to suppliers that are furnishing oxygen and oxygen equipment to beneficiaries who maintain a permanent residence in the CBA at the time that competitive bidding is implemented for that item in the CBA.
- The grandfathering provision also applies to beneficiaries who transition from a Medicare Advantage Plan.
- A beneficiary who would otherwise be entitled to receive oxygen or oxygen equipment from a grandfathered supplier may elect to transition to a contract supplier at any time during the 36-month rental period, and the contract supplier would be required to accept the beneficiary as a customer. The contract supplier would be paid for the duration of the rental period, not to exceed 36 monthly payments or at least 10 monthly rental payment amounts, whichever is greater. The minimum of 10 monthly rental payments would be made regardless of how many months the previous supplier was paid; however, payments only continue if the item continues to be medically necessary. The contract supplier must accept assignment on the monthly rental claims. Beneficiaries are responsible for the 20 percent copayment and any unmet annual deductible.
- When a beneficiary switches from a contract supplier to another contract supplier to receive oxygen and oxygen equipment, the new contract supplier is NOT entitled to a minimum number of months of payment and will be paid the single payment amount for the duration of the equipment rental period not to exceed 36 months of continuous use.

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- If a beneficiary transitions to a contract supplier, the oxygen and oxygen equipment must be returned to the original supplier that owns the equipment. The contract supplier must provide replacement equipment from its own inventory or by contracting with other companies for the purchase of items necessary to fill the order as required by DMEPOS supplier standard number 4 (42 CFR 424.57(c)(4)). The original supplier and the contract supplier need to coordinate the pickup of the old equipment and delivery of the new equipment so that there is no break in service for the beneficiary.
- Suppliers that lose their contract status in subsequent competitive bidding programs may choose to become grandfathered suppliers under such programs and continue furnishing medically necessary oxygen and oxygen equipment to beneficiaries who choose to continue that relationship.

Grandfathered suppliers that furnish oxygen and oxygen equipment will be paid the single payment amount for the relevant competitive bidding area. The grandfathered supplier must accept assignment on all claims for oxygen and oxygen equipment furnished to beneficiaries in a CBA. Beneficiaries are responsible for the 20 percent copayment and any unmet annual Part B deductible.