



# MEDICARE DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS, AND SUPPLIES (DMEPOS) COMPETITIVE BIDDING PROGRAM

## Tip Sheet for “Grandfathered” Suppliers

MAY 2008



Under the Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program, which is effective July 1, 2008, beneficiaries who permanently reside in designated competitive bidding areas (CBAs) are required to obtain competitive bidding items from a contract supplier, unless an exception applies. There is an exception that permits some suppliers to be “grandfathered” allowing them to continue providing certain rented Durable Medical Equipment (DME) items and services even though they are not contracted suppliers.

### What is a grandfathered supplier?

A grandfathered supplier is a non-contract supplier that elects to continue to provide certain rented DME or oxygen and oxygen equipment at the time a competitive bidding program begins in a CBA.

### Who is eligible to be a grandfathered supplier?

- Suppliers that were providing certain rented DME, or oxygen and oxygen equipment at the time a competitive bidding program begins in a CBA may elect to become grandfathered suppliers and continue renting those items to the beneficiaries to whom they were renting those items prior to the beginning of the competitive bidding program. Grandfathered items include the following categories of rented DME:
  - Inexpensive or routinely purchased items provided on a rental basis
  - Items requiring frequent and substantial servicing
  - Oxygen and oxygen equipment (not including oxygen contents, supplies, or accessories furnished for use with beneficiary-owned equipment)
  - Capped rental items provided on a rental basis
- Grandfathering only applies when the beneficiary who resides in a CBA is renting the items at the time the competitive bidding program becomes effective and the rental period for the items began before the start of the program.
- The grandfathering exception may also apply to beneficiaries who transition from a Medicare Advantage Plan.

## What actions are required of the grandfathered supplier?

- A supplier that elects to continue providing grandfathered items to any beneficiary in a CBA must continue to provide those items to all beneficiaries who were renting the items from them before the beginning of the competitive bidding program and choose to continue receiving those items from that supplier for the remaining rental periods unless the items are no longer medically necessary.
- Suppliers that elect to provide grandfathered items to beneficiaries residing in CBAs should notify beneficiaries in writing, **at least 30 days prior to the start date of the competitive bidding program**, of the following:
  - The supplier is offering to continue to provide rental DME or oxygen/oxygen equipment that it is currently providing to the beneficiary for the remaining months during the rental period.
  - The beneficiary has the choice to continue to rent the items from the grandfathered supplier or to switch to a contract supplier after the competitive bidding program begins.
  - The supplier's telephone number so the beneficiary may notify the supplier of his/her choice.
- Sample notification letters for grandfathered and non-grandfathered suppliers can be found at: <http://www.cms.hhs.gov/DMEPOSCompetitiveBid/> on the CMS website. Click on the "Provider Educational Products and Resources" tab and then scroll down to the "Related Links Outside of CMS".
- The supplier should maintain a record of the beneficiary's response to the notification as to whether he/she has decided to continue to receive the items from a grandfathered supplier or chose to go to a contract supplier. If the beneficiary does not respond, the supplier should attempt again to contact the beneficiary.
- When a new period of continuous use begins, following a break in use of greater than **60 days** plus the days remaining in the last rental month after the start of the competitive bidding program, new or additional equipment covered under the new period of continuous use must be obtained from a contract supplier.

## What actions are required of the beneficiary who chooses to continue service from a grandfathered supplier?

- Beneficiaries who are renting oxygen, oxygen equipment, or DME at the time the competitive bidding program becomes effective **may choose to continue to rent those items** from a grandfathered supplier.
- Beneficiaries should indicate this choice by responding to the written notification sent by the grandfathered supplier, which should be sent to the beneficiary **at least 30 days prior to the start date of the competitive bidding program**.
- A beneficiary can elect to change from a grandfathered supplier to a contract supplier at any time, and the contract supplier is required to accept the beneficiary as a customer.

## What rules apply to non-contract suppliers that elect not to be grandfathered suppliers?

- **Picking up equipment**
  - A non-contract supplier may not pick up oxygen equipment or capped rental DME prior to the start of the competitive bidding program (July 1, 2008), unless the beneficiary relocates permanently outside the normal service area of the supplier, or the beneficiary's medical necessity for the item ends.
  - The pick up by a non-contract supplier and the delivery by the contract supplier of the equipment should occur on the same day and month. The non-contract supplier must continue to rent the item until the last day of the last rental month for which the non-contract supplier is eligible to submit a rental claim. For example, if the last rental month before the start of the competitive bidding program begins on June 30 and ends on July 29, the non-contract supplier can pick up the equipment on July 30, and the contract supplier deliver its equipment on July 30.

- Non-contract suppliers, that elect not to be grandfathered suppliers, should notify beneficiaries 30 days before the end date of service that they will not be a grandfathered supplier and notify them within 10 days of picking up the equipment of the arrangements for when they will be picking up the equipment. Final notification of the pick up date and time should be provided to the beneficiary within **two business days** of picking up the equipment.
- **Under no circumstances** may a supplier discontinue service by picking up medically necessary items prior to the end of the month for which a supplier has received a rental payment, even if the last day of the rental month ends after the competitive bidding program start date (July 1, 2008).
- The grandfathered supplier should work with the contract supplier to ensure there is not a break in service or furnishing of medically necessary items.
- **Transfer of Title for Oxygen Equipment and Capped Rental DME**
  - Title for oxygen equipment transfers to the beneficiary on the first day following the 36<sup>th</sup> continuous month during which Medicare payment is made for rental of the equipment.
  - Title for capped rental equipment transfers to the beneficiary on the first day following the 13<sup>th</sup> continuous month during which Medicare payment is made for the equipment.
  - These requirements apply to all suppliers without regard to their grandfathered status.
- **Capped Rental DME Furnished Prior to January 1, 2006**
  - The supplier that provided capped rental DME for which the first rental month occurred prior to January 1, 2006, is responsible for supplying the equipment and for maintenance and servicing after the 15<sup>th</sup> month of the rental period for those beneficiaries that chose the rental option.
  - This requirement applies to all suppliers without regard to their grandfathered status.

### **What Are the Special Payment and Billing Rules for Grandfathered Suppliers?**

Payment for grandfathered items furnished during the initial competitive bidding program varies depending on the payment category to which the item(s) belongs. In all cases, assignment of claims is mandatory, and suppliers must accept the Medicare allowed payment amount as payment in full.

- **Inexpensive or routinely purchased items:** standard provisions for determining the payment amount continues to apply when these items are furnished by grandfathered suppliers. Payment for the items is based on the lower of the actual charge or fee schedule amount for each item. Additional information is available in Chapter 20, section 30.1, of the *Medicare Claims Processing Manual* at <http://www.cms.hhs.gov/manuals/downloads/clm104c01.pdf> on the CMS website.
- **Items requiring frequent and substantial servicing:** payment is based on the single payment amount for the CBA in which the beneficiary maintains a permanent residence.
- **Oxygen and oxygen equipment:** payment is based on the single payment amount established for the CBA in which the beneficiary maintains a permanent residence.
- **Capped rental DME items:** standard payment provisions continue to apply. Payment for these items is based on the lower of the actual charge or fee schedule amount for each item.
- **Grandfathered items furnished during subsequent competitive bidding contract periods:** payment is based on the single payment amount for the round of competitive bidding during which the item is furnished and for the CBA in which the beneficiary maintains a permanent residence.

- **Accessories and supplies for grandfathered items:** may be provided by the same grandfathered supplier that provides the items, if they are used in conjunction with and are necessary for the effective use of a grandfathered item.
  - Payment for these items is based on the single payment amount if the item is a competitive bid item for the CBA in which the beneficiary maintains a permanent residence.
  - If the item is not a competitive bidding item, payment will be made in accordance with the standard payment rules.
  - Examples of medically necessary accessories and supplies used in conjunction with DMEPOS items include tubes, hoses, and masks with respiratory equipment and administration sets with infusion pumps.
  - Accessories and supplies for beneficiary-owned equipment that are competitive bidding items must be furnished by a contract supplier.
- Grandfathered suppliers must update their billing systems to include any new billing codes, modifiers, or other billing instructions for grandfathered suppliers in the competitive bidding program.
- A non-contract supplier that is not a grandfathered supplier is responsible for submitting a claim for any rental period that begins prior to the start of the competitive bidding program.

### **Additional Information**

For more information about the Medicare DMEPOS Competitive Bidding Program, visit <http://www.cms.hhs.gov/DMEPOSCompetitiveBid/> on the CMS website.