



## **ACTION ALERT** **Urge Congress to Revise Oxygen Rules**

In spite of the serious risk and hardships that the 36-month oxygen cap and the post-cap payment rules are creating for home oxygen beneficiaries and providers, lawmakers in Washington will not repeal the cap in the remaining days of the 110<sup>th</sup> Congress. Both Congress and the White House oppose repeal.

For more than a year, the American Association for Homecare has been working with Congress and Centers for Medicare and Medicaid Services (CMS) staff to seek a solution to the serious problems created by the cap. But the reality is that the House of Representatives included a proposal to cap oxygen rental/service payments at 18 months the State Children's Health Insurance Program (SCHIP) bill. A Senate proposal would have reduced oxygen payment rates by approximately 40 percent. Moreover, the Bush Administration supports reducing the cap to 13 months.

However, the HME sector can ask lawmakers to press CMS to revise its post-36 month payment rules.

### **Immediate Actions (November and December 2008)**

First, contact your Senators and Representatives in Congress via email or telephone. Or better yet, ask for a personal meeting in their district office. Ask your legislators to contact CMS urging the agency to revise the oxygen rules published in the Medicare Physician Fee Schedule for 2009. Explain that there are three principal problems with the oxygen rules:

**1) Patient access to care and the quality of that care will suffer if oxygen providers do not receive adequate payment for routine maintenance and service of oxygen systems.** The CMS rule only allows for two 30-minute maintenance visits per year and would inadequately reimburse those visits at \$15 to \$30 per visit.

*AAHomecare recommendation: Homecare providers need an ongoing fee that begins after the payments cap. The fee should be paid every six months and it should equal the fee schedule amount for one month's rental.*

**2) An unreasonable and completely impractical requirement that oxygen providers must arrange continued care for patients who move out of a provider's service area.**

*AAHomecare recommendation: This rule should be deleted from Medicare regulations because it is unworkable and it places oxygen patients at risk for interruptions to a life-sustaining therapy.*

**3) There is no recognition of any costs associated with visiting patients who require episodes of unscheduled emergency services, such as those caused by loss of power, ice storms or hurricanes, or equipment failure.**

*AAHomecare recommendation: CMS should pay approximately \$100 per episode for unscheduled service and pay (consistent with current repair policy) the labor costs associated with the service and replacement parts not covered under a manufacturer's warranty.*

Second, comment on the oxygen rules. The deadline is December 29, 2008. Providers may want to select one or two key points use examples from their own HME practice to illustrate the points. The oxygen materials on the AAHomecare website ([www.aahomecare.org](http://www.aahomecare.org)) provide background and talking points.

Comments must be received at one of the addresses below no later than 5 p.m. EST on December 29, 2008. In comments, refer to file code CMS-1403-FC. CMS will not accept comments by FAX . Submit comments in one of four ways (no duplicates): 1) **Electronically.** Go to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" and enter the filecode to find the document accepting comments. 2) **By regular mail.** Mail written comments to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1403-FC, P.O. Box 8013, Baltimore, MD 21244-8013. Allow sufficient time for mailed comments to be received before the close of the comment period. 3) **By express or overnight mail.** Use the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1403-FC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

### **Longer-Term Actions (2009)**

AAHomecare is working closely with other oxygen stakeholder organizations on reform of Medicare oxygen policy. Reform will require congressional action. Key provisions of reform will include:

- Eliminating the 36-month cap;
- Basing payments on a patient-focused model rather than a system that only recognizes equipment;
- Ensuring that payment for oxygen therapy extends as long as there is medical need – which means beyond 36 months if necessary;
- Removing oxygen from the competitive bidding program.

This effort will require broad support from patients, physicians, and Congress. It will require legislation and enactment into law by the president. Reform of this type is the only way to ensure access to quality oxygen therapy and fair reimbursement for providers.