

Date

The Honorable *(Name of Legislator)*

Address

Washington, DC 20XXX

Dear *Representative / Senator (pick one) (Legislator's Last Name)*:

On behalf of *(company name)*, I am writing to you with grave concern regarding the 36-month rental payment cap for oxygen and how it will affect not only our business, but also our nation's senior citizens and Medicare beneficiaries.

The Deficit Reduction Act of 2005 (DRA) called for a 36-month cap on rental payments to oxygen providers, forcing patients to assume ownership of their oxygen equipment at the end of the rental period. On July 15, 2008, the Medicare Improvements for Patients and Providers Act (MIPPA) passed and attempted to amend the DRA by repealing the transfer of ownership of equipment to the patient after the 36<sup>th</sup> month. According to our interpretation of the Congressional language in Sect. 144 of MIPPA, the Centers for Medicare and Medicaid Services (CMS) would continue to pay oxygen providers after the 36<sup>th</sup> month for maintenance and servicing (see Sect. 144, attached). However, CMS has not interpreted the language in the same way.

Pursuant to MIPPA, the Centers for Medicare and Medicaid Services (CMS) recently released new oxygen payment rules that were included in the final rule titled, "Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B (CMS-1403-FC)." According to the rules, oxygen providers must:

- Continue to furnish, maintain, and service the oxygen equipment after the 36-month rental period with no payments from CMS. The one exception is that CMS will only pay for 30 minutes of labor once every six months in 2009 alone.
- Maintain responsibility of oxygen patients who relocate outside of the provider's service area with no compensation.
- Continue to furnish both the equipment and its contents for liquid or gaseous oxygen, while maintaining responsibility for the delivery of the contents and for repair or services of the equipment with no payments.

**These changes mandated by CMS are not viable and are unsustainable. As a small-business provider, *(company name)*, will no longer be able to ensure quality care and services to our oxygen patients,** because the payment rules do not take into account the staffing costs or the traveling costs necessary to uphold them. Many small-business oxygen providers:

- May need to eliminate or reduce such services as 24/7 on-call services and/or emergency services;
- May reduce the frequency of their portable oxygen deliveries (e.g. weekly deliveries to monthly);
- May have difficulty finding another oxygen provider to service a patient who is either traveling or has moved outside of their service area (because the new provider cannot charge for the use of their equipment);
- May have to reduce the amount of portable oxygen tanks a patient receives, which would restrict their patients from enjoying outside-of-home activities.

*Congressman/woman or Senator (pick one)*, not only will the new payment rule for oxygen put thousands of small-business oxygen providers like *(company name)* in jeopardy, it will also put the health and safety of thousands of oxygen patients in jeopardy as well. **I ask that you please help our nation's most valued citizens breathe easier by repealing this policy, mandated by both the DRA and MIPPA.**

If you have any questions or concerns, please do not hesitate to contact me at xxx-xxx-xxxx. I thank you for your time and consideration.

Sincerely,

*Name*

*Title*

*Company*

*Medicare Improvements for Patients and Providers Act*  
*Sect. 144*

(b) REPEAL OF TRANSFER OF OWNERSHIP OF OXYGEN EQUIPMENT.—

(1) IN GENERAL.—Section 1834(a)(5)(F) of the Social Security Act (42 U.S.C. 1395m(a)(5)(F)) is amended—

(A) in the heading, by striking “OWNERSHIP OF EQUIPMENT” and inserting “RENTAL CAP”; and

(B) by striking clause (ii) and inserting the following:

“(ii) PAYMENTS AND RULES AFTER RENTAL CAP.—

After the 36th continuous month during which payment is made for the equipment under this paragraph—

“(I) the supplier furnishing such equipment under this subsection shall continue to furnish the equipment during any period of medical need for the remainder of the reasonable useful lifetime of the equipment, as determined by the Secretary;

“(II) payments for oxygen shall continue to be made in the amount recognized for oxygen under paragraph (9) for the period of medical need; and

“(III) maintenance and servicing payments shall, if the Secretary determines such payments are reasonable and necessary, be made (for parts and labor not covered by the supplier’s or manufacturer’s warranty, as determined by the Secretary to be appropriate for the equipment), and such payments shall be in an amount determined to be appropriate by the Secretary.”.

(2) EFFECTIVE DATE.—The amendments made by paragraph

(1) shall take effect on January 1, 2009.