

Post-Election Oxygen Issues

BACKGROUND: The Home Oxygen Patient Protection Act—a bill that would overturn the Deficit Reduction Act’s provision capping payment and transferring ownership of equipment used in the home after 36 months—has not been passed. H.R. 5513 (OR “HOPP”) enjoys the support of prominent members of the US Senate, and has picked up about 50 sponsors in the House. There is cause for modest optimism that this issue will be again be addressed after the November elections.

As you are aware, during the postelection session Congress has pledged to address a problem in the way Medicare pays physicians. This could provide a vehicle for other Medicare “corrections” to be enacted. However, fixing the physician reimbursement schedules will cost between \$11 billion and \$30 billion (depending on whose proposal would gain consensus and pass), and Congress would have to find a way to pay for this expense. All too often it has looked to projected savings in various provisions that limit payment for HME as the source of the funds.

There are several ways to pay for the “doc fix,” but each has its own “special interest group” trying to protect their funds. Our industry is among those groups, and has already garnered support in both the House and Senate to stave off any proposals to reduce oxygen payments. As Democrats have become the majority party, it is more unlikely that any significant legislation related to the Medicare program will pass this year.

NOVEMBER LAME DUCK SESSION "101":

What is a Lamé Duck Session?

A Lamé duck session is when the United States Congress (or only one chamber thereof) meets following the November general elections (and before the inauguration of the next Congress) to consider various items of business.

Some lawmakers who return for this session will not be in the next Congress. Hence, they are informally called "lamé duck" elected officials participating in a "lamé duck session". Such officials may do things they would not otherwise do if they were planning to face the voters. Lamé duck officials also tend to have less political power as other elected officials see less advantage in cooperating with them. In this case, Chairman Bill Thomas (R-CA) will be retiring at the end of this congress. That said, he still is the Chairman of the Ways & Means committee through the end of December.

What happens during a Lamé Duck Session?

Lamé-duck sessions occur when Congress returns after an election to take care of unfinished business. The lamé ducks, originally an English term referring to bankrupt businessmen, are lawmakers who are retiring or have had their wings clipped by an election defeat and are hardly in the mood for another stint on Capitol Hill. Lamé-duck sessions occur when Congress returns after an election to take care of unfinished

business. In this case, Congress needs to finish appropriations (budget) bills to keep the government funded in 2007.

This lame duck session, if it occurs, would be the 16th since 1940 and the fifth straight from the 1998 election year. With people eager to get out of town, and those leaving Congress less accountable to their constituents, they generally are not considered conducive to the writing of carefully crafted, well-debated legislation. Also there is the likely hood that congress will have to pass what is called an “Omnibus Bill”

What is an Omnibus Bill?

An omnibus spending bill is a bill that sets the budget of many departments of the United States government at once. It is one possible outcome of the budget process in the U.S.

Every year, Congress must pass bills that appropriate money for all-discretionary government spending. Generally, one bill is passed for each sub-committee of the U.S. House Committee on Appropriations. Ordinarily, each bill is passed separately — one bill for Defense, one for Homeland Security, Health and Human Services and so on. When Congress does not or cannot produce separate bills in a timely fashion (by the beginning of the fiscal year on October 1), it will roll many of the separate appropriations bills into one omnibus spending bill. Some of the reasons that Congress might not complete all the separate bills include partisan disagreement, disagreement amongst members of the same political party, and too much work on other bills.

Oftentimes, omnibus spending bills are criticized for being full of pork (unnecessary/wasteful spending that pleases constituents). The bills regularly stretch to more than 1,000 pages long, and often have not even been read in full by the people voting for them. Nevertheless, they have grown more common in recent years. The most recent one is for fiscal year 2005.

Why should HME Providers and Beneficiaries be concerned during the upcoming Lame Duck Session?

Congress is due to reconvene November 14 for a “lame duck” session. The current plan is for the 109th congress to complete its business by mid-December. As stated above congress will be focused on spending / appropriations bills.

Chairman Bill Thomas in this year Presidential budget had the Congressional Budget Office (CBO) score the proposal to cap oxygen equipment at 13 months: The CBO scored the savings of a cap on oxygen / 13 months at \$6.5B over five years! One of the issues that his year’s lame duck Congress (109th) must tackle is pending cuts to physician Medicare reimbursement. To do this congress must act on the physician reimbursement cuts before the end of the year. If they do not address the issue, physicians will receive 5% reduction in Medicare reimbursement. The question and concern to DME providers and beneficiaries is – “what will congress use to offset the cost of a “Doc Fix”? Chairman Thomas has the \$6.5 billion dollar blank check in his hand (reduction savings with a cap on oxygen at 13 months). As Chairman Bill Thomas is retiring, he does not have to face

the voters and has shown more than a casual dislike for the DME industry. It is therefore the industry concern, that he will use a cap on oxygen at 13 months to offset the “Doc Fix” and will attempt to stick the language into the HHS appropriations portion of any “omnibus bill”.

To keep this from happening, we as an industry must notify each of our Medicare Beneficiaries to contact their elected congressional officials be aware of this very real possibility, and to stop any attempt by Chairman Thomas (or any other congressional member) to use a cap on oxygen at 13 months as an offset for any healthcare item in an omnibus bill.

SAMPLE HOME OXYGEN PATIENT LETTER:

Please send this letter to your Medicare Beneficiaries today!

Dear Home Oxygen Customer,

Earlier this year, sweeping changes to the Medicare home oxygen benefit were passed by Congress and signed into law by the President. These changes were included in the controversial Deficit Reduction Act of 2005. Some Members of Congress have been telling medical oxygen users that everything will be the same except for the monthly payment. But this is not the whole story.

Under the new rent-to-purchase policy for oxygen equipment in the new law, you will own the stationary or portable home oxygen equipment after 36 months. You will assume responsibility for making sure the equipment is managed and serviced. While there is some vague language in the new law, it does not provide any details about mechanisms for ongoing maintenance and service of the oxygen equipment. There are no provisions for refilling portable systems, repair or replacement of broken equipment, 24-hour emergency service, or replacement oxygen supplies. The routine services that are now performed by home oxygen providers as part of the monthly rental fee will no longer occur automatically.

We believe the oxygen provisions in the new law should be repealed. The new law transfers too much of the burden for managing oxygen therapy to the oxygen user. It multiplies the risks of unmonitored or improper use of medical oxygen, which is a prescription drug and an essential lifeline for many Americans who depend on oxygen therapy.

The Bush administration has called homecare “radically more efficient” than other healthcare settings. We agree. Let’s strengthen homecare for Americans.

Call your U.S. Senators and your Representative in the House. The switchboard at the Capitol in Washington, D.C. is 202-224-3121. Ask them to:

- **Please repeal the provision of the Deficit Reduction Act that requires ownership of oxygen equipment after 36 months by cosponsoring H.R. 5513 (for House of Representatives member) or S.3814 (for Senate members). This adds risks and burdens to me and does not save Medicare any money.**
- **Please do not make further cuts to the oxygen benefit in Medicare. It has already been by nearly 50 percent over the past decade.**

Call your Senators and your Representative in Congress today. Thank you.

Sincerely,

[Name of HME Firm] -----

HR 5513 & S. 3814 Talking Points:

Note: The following talking points can be used in your own individual conversations with your congressional members. It is best if we keep the information to the beneficiary as simple as possible.

The current DRA cap on oxygen at 36 months and a possible cap on oxygen at 13 months will have the following effect:

- Limit beneficiary access to ambulatory oxygen
- Limit beneficiary access to innovation and new technology
- Limits beneficiary freedom to relocate on a permanent or temporary basis prior to transfer of title of ownership
- Limit beneficiary access to choice of suppliers
- Limit beneficiary access to 24/7 service and maintenance support

**** DISCUSSION ****

Limit beneficiary access to ambulatory oxygen

Comment:

Suppliers prior to the cap on oxygen at 36 months routinely provided enough oxygen for patients to ambulate as needed because of ongoing reimbursement of portable and stationary oxygen. The transferring ownership at 36 months of cylinders along with concentrators adds cost to the provider. In addition, many providers rent cylinders from suppliers to provide to their patients. This will require providers to increase expense by purchasing more cylinders and it would force the supplier to provide only the number of cylinders the beneficiary needs to ambulate inside of the home, per Medicare final rule. As with the case of liquid oxygen, many providers provide liquid oxygen to those

patients who ambulate a great deal. Liquid oxygen provides a beneficiary to have a lightweight system to ambulate for extended periods of time as opposed to carrying numerous cylinders. A common practice of supplier is to pick up an empty reservoir and drop off a full one, also referred to as milk canning. Due to the transfer of ownership, it would be cost prohibitive for a supplier to continue this practice because both vessels would have to be transferred to the beneficiary.

Providers cannot utilize liquid oxygen as a modality for their beneficiary's further limiting access to beneficiaries due to a lack of reimbursement during the initial 36 months and the succeeding periods after ownership has been transferred to the beneficiary. If a cap on oxygen at 13 months is instituted, there will be no ambulatory oxygen.

Limits beneficiary access to innovation and new technology

Comment:

Payment for a transfilling system or portable oxygen concentrator would fall under- B. Concentrator and/or oxygen generating portable equipment and under D. Liquid or gaseous stationary equipment and oxygen generating portable equipment.

The difference in reimbursement between the traditional equipment (concentrators, liquid stationary, liquid portable and gaseous portable) at 36-month cap on oxygen hardly covers the cost to acquire the newer technology. With a cap on oxygen at 13 months Providers will be reluctant in providing this equipment at a loss; therefore any cap on oxygen limits access to newer technology by not providing adequate reimbursement to cover the cost of the equipment.

Limit beneficiary access to relocate on a temporary or permanent basis

Limit beneficiary access to choice of suppliers

Comment:

A provider in the new area will not have a total 36-month time period to collect reimbursement. Based on the final rule, at 36-months ownership of the oxygen equipment needs to transfer to the beneficiary. Under the current system (prior to the DRA) a supplier knew that they would receive reimbursement on an ongoing basis for the use of the equipment and for providing the services required. Therefore they were willing to work with providers in other locations on a temporary basis to take care of the beneficiary. This particularly effected the "Snow Bird" population.

A cap on oxygen limits beneficiary's ability to relocate because they may not be able to find a provider in their new desired locale to provide the necessary equipment.

The same ideology applies to a beneficiary currently having the ability to switch from one provider to another. In addition, CMS through Competitive Acquisition will limit the

number of suppliers a beneficiary has to choose from as well. A cap on oxygen further limits the number of suppliers a beneficiary may choose from.

Limit beneficiary access to 24-hour service and maintenance support

Comment:

Currently a beneficiary is able to pick up the phone at all hours and contact their oxygen supplier. Once a provider has completed the assignment of providing oxygen for 36 continuous months and transfer ownership of this equipment to the beneficiary, the beneficiary no longer has anyone to call unless they desire to pay a fee. This service that is currently being provided as part of the current reimbursement schedule would go away for the beneficiary.

Example: A beneficiary contacts a Medicare provider because they believe their Liquid Oxygen Reservoir is malfunctioning. The provider has to notify the beneficiary that if they come out and inspect the equipment and they find that there isn't anything wrong with the equipment, the beneficiary would be responsible for paying the provider. Currently the provider doesn't receive reimbursement because of the on-going rental of the equipment. If a provider determines that the product is malfunctioning, the beneficiary would be required to pay a 20% co-pay for the total charge of the repair that isn't covered under warranty.

Tips On Calling Your Member Of Congress

The easy way to call your member of Congress in Washington D.C.

Call the US Capital Switchboard @ 202-224-3121 And then...

Provide the switchboard operator with your ZIP Code. The operator will then connect you with the D.C. office of your Congressman.

- The call will be answered by a staff member. Ask to be connected with the office Legislative Assistant (LA) that deals with Medicare Issues (Health LA). When you have been connected with the Health LA – Identify yourself, your business, your business location in the district and the number of people whom are employed with your business.
- Stress your concern over the impact that the so called “Doc Fix” (Medicare Physician reimbursement cuts) will have on your customers, your employees and your business, it the Doc Fix includes additional cuts to Durable Medical Equipment (DME). Particularly, if these off-set cuts include an additional cap on oxygen at 13 months.
- Ask that your congressman contact Chairman Bill Thomas office (Ways & Means Committee) and tell him that they will not support additional cuts to DME in any “Tax Package Extender”.

- Ask that your congressman / senator not support any “omnibus” or appropriations bill that contains additional cuts to DME.
- Politely demand that the congressman respond to your specific concerns and stress your concerns of the impact to Medicare Beneficiaries.
- Ask if you can follow up with the LA in the next 7 days.
- If you do not get put through to the Health LA, leave a message and request a call back.
- If you cannot get through, continue to call until you do. Ask each of your employees to make the same call.
- Ensure you do follow up in seven days with the Health LA.
- Do not settle for a vague answer. Continue to push for a response.
- If you receive a vague answer or NO response, ask when the congressman will be next back in the district...then ask to set up a meeting with the Congressman – do not take NO for an answer. Members of congress will be back in their home districts between now and Dec 5th.

To call your member of Congress in the local District Office:

Go to www.vgm.com and click on D.C. Link. Click on “Contact your local official” or go to <http://capwiz.com/vgm/home/> .

Here you will type in your ZIP Code to find the telephone number and address for your local Congressional office. Follow the same process as above.

VGM LEARNS THAT A OXYGEN CAP MAY STILL BE INCLUDED IN A LAME DUCK SESSION "DOC FIX" <http://www.vgm.com/headlines/article.asp?ID=931>