

(i) If the prescribed flow rate is different for stationary oxygen equipment than for portable oxygen equipment, the flow rate for the stationary equipment is used.

(ii) If the prescribed flow rate is different for the patient at rest than for the patient at exercise, the flow rate for the patient at rest is used.

(iii) If the prescribed flow rate is different for nighttime use and daytime use, the average of the two flow rates is used.

(f) *Furnishing oxygen and oxygen equipment after the 36-month rental cap.*

(1) The supplier that furnishes oxygen equipment for the 36th continuous month during which payment is made under this section must—

(i) Continue to furnish the equipment during any period of medical need for the remainder of the reasonable useful lifetime established for the equipment in accordance with § 414.210(f)(1); or

(ii) Arrange for furnishing the oxygen equipment with another supplier if the beneficiary relocates to an area that is outside the normal service area of the supplier that initially furnished the equipment.

(2) The supplier that furnishes liquid or gaseous oxygen equipment (stationary or portable) for the 36th continuous month during which payment is made under this section must—

(i) Continue to furnish the oxygen contents necessary for the effective use of the liquid or gaseous equipment during any period of medical need for the remainder of the reasonable useful lifetime established for the equipment in accordance with § 414.210(f)(1); or

(ii) Arrange for furnishing the oxygen contents with another supplier if the beneficiary relocates to an area that is outside the normal service area of the supplier that initially furnished the equipment.

(g) *Additional supplier requirements for rentals that begin on or after January 1, 2007.*

(1) The supplier that furnishes oxygen equipment for the first month during which payment is made under this section must continue to furnish the equipment for the entire 36-month period of continuous use, unless medical necessity ends or—

(i) The item becomes subject to a competitive acquisition program im-

plemented in accordance with section 1847(a) of the Act;

(ii) The beneficiary relocates to an area that is outside the normal service area of the supplier that initially furnished the equipment;

(iii) The beneficiary elects to obtain oxygen equipment from a different supplier prior to the expiration of the 36-month rental period; or

(iv) CMS or the carrier determines that an exception should apply in an individual case based on the circumstances.

(2) Oxygen equipment furnished under this section may not be replaced by the supplier prior to the expiration of the reasonable useful lifetime established for the equipment in accordance with § 414.210(f)(1) unless:

(i) The supplier replaces an item with the same, or equivalent, make and model of equipment because the item initially furnished was lost, stolen, irreparably damaged, is being repaired, or no longer functions;

(ii) A physician orders different equipment for the beneficiary. If the order is based on medical necessity, then the order must indicate why the equipment initially furnished is no longer medically necessary and the supplier must retain this order in the beneficiary's medical record;

(iii) The beneficiary chooses to obtain a newer technology item or upgraded item and signs an advanced beneficiary notice (ABN); or

(iv) CMS or the carrier determines that a change in equipment is warranted.

(3) Before furnishing oxygen equipment, the supplier must disclose to the beneficiary its intentions regarding whether it will accept assignment of all monthly rental claims for the duration of the rental period. A supplier's intentions could be expressed in the form of a written agreement between the supplier and the beneficiary.

[57 FR 57690, Dec. 7, 1992, as amended at 71 FR 65933, Nov. 9, 2006; 73 FR 69936, Nov. 19, 2008; 79 FR 72253, Dec. 2, 2014]

§ 414.228 Prosthetic and orthotic devices.

(a) *Payment rule.* Payment is made on a lump-sum basis for prosthetic and

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orthotic devices subject to this subpart.

(b) *Fee schedule amounts.* The fee schedule amount for prosthetic and orthotic devices is determined as follows:

(1) The carrier determines a base local purchase price equal to the average reasonable charge for items purchased during the period July 1, 1986 through June 30, 1987 based on the mean of the carrier's allowed charges for the item.

(2) The carrier determines a local purchase price equal to the following:

(i) For 1989 and 1990, the base local purchase price is adjusted by the change in the level of the CPI-U for the 6-month period ending December 1987.

(ii) For 1991 through 1993, the local purchase price for the preceding year is adjusted by the applicable percentage increase for the year. The applicable percentage increase is equal to 0 percent for 1991. For 1992 and 1993, the applicable percentage increase is equal to the percentage increase in the CPI-U for the 12-month period ending with June of the previous year.

(iii) For 1994 and 1995, the applicable percentage increase is 0 percent.

(iv) For all subsequent years the applicable percentage increase is equal to the percentage increase in the CPI-U for the 12-month period ending with June of the previous year.

(3) CMS determines the regional purchase price equal to the following:

(i) For 1992, the average (weighted by the relative volume of all claims among carriers) of the local purchase prices for the carriers in the region.

(ii) For 1993 and subsequent years, the regional purchase price for the preceding year adjusted by the applicable percentage increase for the year.

(4) CMS determines a purchase price equal to the following:

(i) For 1989, 1990 and 1991, 100 percent of the local purchase price.

(ii) For 1992, 75 percent of the local purchase price plus 25 percent of the regional purchase price.

(iii) For 1993, 50 percent of the local purchase price plus 50 percent of the regional purchase price.

(iv) For 1994 and subsequent years, 100 percent of the regional purchase price.

(5) For 1992 and subsequent years, CMS determines a national average purchase price equal to the unweighted average of the purchase prices determined under paragraph (b)(4) of this section for all carriers.

(6) CMS determines the fee schedule amount equal to 100 percent of the purchase price determined under paragraph (b)(4) of this section, subject to the following limitations:

(i) For 1992, the amount cannot be greater than 125 percent nor less than 85 percent of the national average purchase price determined under paragraph (b)(5) of this section.

(ii) For 1993 and subsequent years, the amount cannot be greater than 120 percent of the national average nor less than 90 percent of the national average purchase price determined under paragraph (b)(5) of this section.

(c) *Payment for therapeutic shoes.* The payment rules specified in paragraphs (a) and (b) of this section are applicable to custom molded and extra depth shoes, modifications, and inserts (therapeutic shoes) furnished after December 31, 2004.

[57 FR 57691, Dec. 7, 1992, as amended at 60 FR 35498, July 10, 1995; 73 FR 69937, Nov. 19, 2008]

§ 414.229 Other durable medical equipment—capped rental items.

(a) *General payment rule.* Payment is made for other durable medical equipment that is not subject to the payment provisions set forth in § 414.220 through § 414.228 as follows:

(1) For items furnished prior to January 1, 2006, payment is made on a rental or purchase option basis in accordance with the rules set forth in paragraphs (b) through (e) of this section.

(2) For items other than power-driven wheelchairs furnished on or after January 1, 2006, payment is made in accordance with the rules set forth in paragraph (f) of this section.

(3) For power-driven wheelchairs furnished on or after January 1, 2006 through December 31, 2010, payment is made in accordance with the rules set forth in paragraphs (f) or (h) of this section.