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Advocacy Suggests that the Centers for Medicare and Medicaid Services Improve the Analysis of the FY 2009 Payment for Certain Durable Medical Equipment Final Rule on Small Suppliers of Oxygen

On December 17, 2008 the Office of Advocacy (Advocacy) filed comments with the Centers for Medicare and Medicaid Services (CMS) asking that the agency do a better job analyzing the economic impacts of the FY 2009 Payment for Certain Durable Medical Equipment final rule on small oxygen suppliers. A copy of Advocacy's letter may be accessed at <http://www.sba.gov/advo/laws/comments>.

- On November 19, 2008 CMS published Medicaid Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009; E-Prescribing Exemption for Computer-Generated Facsimile Transmissions; and Payment for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) in the *Federal Register* (73 Fed. Reg. 69726, November 19, 2008). While CMS did provide some analysis about how the rule would impact small oxygen suppliers, it suggested that the impact would be minimal because the rule allowed the suppliers to regain ownership of the oxygen equipment after it was used by the Medicare beneficiary. Yet, CMS admitted that measuring the rule's impacts on small oxygen suppliers was difficult.
- Advocacy received several inquiries from small oxygen suppliers and their representatives asserting that CMS had underestimated the impacts of the rule and was incorrect in its conclusion that the industry would benefit from regaining ownership of the oxygen supplies.
- Advocacy suggested to CMS that pursuant to the Regulatory Flexibility Act, CMS should have done a better job of analyzing the how the rule would affect small oxygen suppliers.
- In its December 17, 2008 letter, Advocacy provided CMS with examples of how certain provisions in the rule would impose significant economic impacts on oxygen suppliers.

For more information, visit Advocacy's web page at www.sba.gov/advo or contact Linwood Rayford at (202) 205-6533.