

**Alpha-1 Association • Alpha-1 Foundation • American Association of Respiratory Care • American Lung Association • American Thoracic Society • COPD Foundation • National Association for Medical Direction of Respiratory Care • National Home Oxygen Patients Association**

**Individuals on Home Oxygen: Rights and Safeguards**

*March 13, 2009*

- 1) The home oxygen provider protects and promotes the rights of each individual who receives oxygen equipment, oxygen contents and related services, including each of the following rights:
  - A. The right to choose the home oxygen provider that can best serve his/her needs based on the prescribing physician's order;
  - B. The right to be fully informed orally and in writing in advance of the initiation of treatment
    - i. All items and services furnished by the home oxygen provider for which payment is made under this title,
    - ii. The coverage available for such items and services under this title,
    - iii. Any charges for items and services not covered under this title and any charges the individual may have to pay with respect to items and services furnished by the home oxygen provider,
    - iv. Any changes in the charges or items and services described in clauses (i), (ii) or (iii).
  - C. The right to be fully informed in advance about the different oxygen systems available and the services to be provided by the home oxygen provider;
    - i. The right to consult with one's physician or other qualified clinician who is not employed by the home oxygen provider regarding which system is best for his/her needs and lifestyle in advance of the initiation of treatment;
    - ii. The right to change to a different home oxygen provider if he/she is not satisfied with the equipment or services being furnished by the current home oxygen provider.
  - D. The right to be fully informed in advance of any changes in the oxygen system or services to be provided by the home oxygen provider that may affect the individual's well-being (except with respect to an individual adjudged incompetent);
  - E. The right to fully participate in all decisions related to one's use of home oxygen, including any changes in his/her care or treatment.
    - i. The right to consult with one's physician prior to any changes in treatment or care by the home oxygen provider to ensure that such changes are appropriate and medically necessary.
  - F. The right to voice grievances with respect to the care and treatment that is (or fails to be) furnished by the home oxygen provider without recrimination or reprisal for such actions.
  - G. The right to privacy of his/her personal records maintained by the home oxygen provider;
    - i. The right to be informed by the home oxygen provider orally and in writing of the type of information about the individual that is kept in the medical record;
    - ii. The right to approve or refuse the release of personal records to any individual other than the home oxygen provider;
  - H. The right to have one's property treated with respect.

- I. The right to be fully advised orally and in writing annually of the Medicare toll free hotline and the availability of a Medicare Beneficiary Ombudsman in which complaints and grievances may be filed against the home oxygen provider or information or clarification of Medicare policies with respect to coverage of oxygen equipment and related services may be obtained.
  - J. The right to have access to emergency services 24 hours a day, 7 days a week and an emergency back-up system in the event of a power failure.
    - i. The right to be advised orally and in writing prior to initiation of the furnishing of equipment and services of the home oxygen provider's contingency plan and/or arrangements with other providers to respond to emergencies or natural disasters.
- 2) The home oxygen provider maintains a ready supply of oxygen and the proper equipment and accessories to ensure compliance with the prescribing physician's order.
- A. The oxygen equipment and supplies should be furnished upon receipt of the physician's order without a waiting period.
  - B. The oxygen equipment and supplies should be well maintained and regularly inspected in accordance with established standards.
- 3) The home oxygen provider is prohibited from changing the individual's oxygen equipment unless one of the following exceptions applies:
- A. The item initially furnished is lost, stolen, irreparably damaged, is being repaired or no longer functions.
    - i. If a change is required due to one of the circumstances identified above, the home oxygen provider must replace the item(s) with the same or equivalent make and model.
    - ii. Under no circumstances may the home oxygen provider furnish an older or substandard system.
  - B. A physician orders different equipment for the individual.
    - i. The physician's order must indicate why the equipment initially furnished is no longer medically appropriate and the home oxygen provider must retain this order in the individual's medical record;
  - C. The individual chooses to obtain a newer technology item or upgraded item and signs an Advanced Beneficiary Notice (ABN);
  - D. The individual relocates to an area that is outside of the normal service area of the home oxygen provider that initially furnished the equipment;
  - E. The individual elects to obtain oxygen equipment from a different home oxygen provider; or
  - F. Other exceptions as deemed appropriate by the Secretary.
- 4) The home oxygen provider is prohibited from dropping an individual once the provider has agreed to furnish home oxygen equipment and related items and services unless the individual chooses to change providers as is their right under paragraph 1, subparagraph ii.
- A. Notwithstanding any other provision of this section, a home oxygen provider may not refuse to furnish home oxygen equipment and services based on the patient's medical conditions and/or mental acuity.
- 5) The home oxygen provider must be licensed to provide services in accordance with State law and cannot contract with an individual or entity to provide the licensed services.
- A. The home oxygen provider must obtain oxygen from a State-licensed oxygen supplier (applicable only to those suppliers in States that require oxygen licensure.)

- B. The home oxygen provider must employ personnel who are trained and educated to furnish oxygen equipment, oxygen contents and related services in accordance with State law and other applicable federal and state rules and regulations.
  - i. The home oxygen provider may not create a new class of individual such as a “respiratory technician practitioner” as a way of meeting the personnel qualifications.
- C. Where state law permits a licensed respiratory therapist to perform certain services associated with use of home oxygen, such as the initial home evaluation, training and education of the individual, and periodic monitoring, the home oxygen provider must allow an individual on home oxygen access to the licensed respiratory therapist.
  - i. The provisions of this title do not mandate that a respiratory therapist be employed or retained by the home oxygen provider except in those cases where State law requires such expertise.