

APA-1
11/96

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-5-29

Rule Title: Oxygen and Durable Medical Equipment Dispensed to Medicare Recipients by Participating Providers

New; Amend; Repeal; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

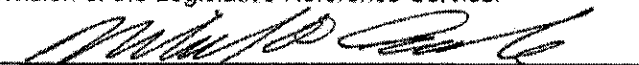
Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer 

Date 11/18/15

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**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-5-.29

Rule Title: **Oxygen and Durable Medical Equipment Dispensed to Medicare Recipients by Participating Providers**

 New x Amend Repeal Adopt by Reference

NO
 YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

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**ALABAMA DEPARTMENT OF REVENUE
Sales & Use Tax Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-1-.130 Printers

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to correct a code citation that does not pertain to sales tax.

RULE NO. & TITLE

810-6-2-.90.02 Simplified Sellers Use Tax Remittance Program

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to provide guidance for out-of-state sellers selling products into Alabama who have no physical presence or other requirement to collect Alabama sales or use tax.

RULE NO. & TITLE

810-6-5-.29 Oxygen and Durable Medical Equipment Dispensed to Medicare Recipients by Participating Providers

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to comply with the provisions of Act 2014-453.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 2:00 p.m. on Wednesday, January 13, 2016, Room 1203, First Floor, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://revenue.alabama.gov/analysis/upcoming-rule-hearings.cfm>

All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Wednesday, January 13, 2016

CONTACT PERSON AT AGENCY:

Jennifer Deese
Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380



Michael D. Gamble, Secretary
Alabama Department of Revenue

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810-6-5-29 Oxygen and Durable Medical Equipment Dispensed to Medicare Recipients by Participating Providers.

(1) The term "durable medical equipment" shall mean equipment which can stand repeated use, is used to serve a purpose for medical reasons, and is appropriate and suitable for use in the home. The term "participating provider" shall mean a supplier who accepts Medicare assignments.

(2) Sales of oxygen and durable medical equipment dispensed under orders from a duly licensed physician by a participating provider to a Medicare recipient are exempt from state and local sales and use taxes.

(3) With the exception of the purchases outlined in paragraph (2) above, purchases under Medicare Part B are taxable in the same manner as purchases under any other healthcare insurance policy.

(4) Effective August 1, 2014, in addition to any other exemptions provided in subsection (2) or (3) above, any item used for the treatment of illness or injury or to replace all or part of a limb or internal body part purchased by or on behalf of an individual pursuant to a valid prescription and covered by and billed to Medicare, Medicaid, or a health benefit plan shall be exempt from state, county, and municipal sales, ~~and use,~~ rental and leasing taxes. This exemption includes, but is not limited to, any of the following:

(a) Durable medical equipment, including repair parts and the disposable or single patient use supplies required for the use of the equipment,

(b) Prosthetic and orthotic devices, and

(c) Medical supplies as defined and covered under the Medicare program, including, but not limited to, items such as catheters, catheter supplies, ostomy bags and supplies related to ostomy care, specialized wound care products, and similar items that are covered by and billed to Medicare, Medicaid, or a health benefit plan. (Section 40-9- 30, Code of Alabama 1975.)

(e)(d) The provisions in paragraph (2) above were not revoked by the changes set forth in Code of Alabama 1975, Section 40-9-30(d). Sales of oxygen and durable medical equipment to Medicare patients, as outlined in paragraph (2) above, continue to be exempt even when not billed directly to Medicare. However, sales of other items to Medicare patients must follow the requirements set forth in Section 40-9-30(d), in order to be exempt from tax.

(5) Healthcare providers, including but not limited to, hospitals, physicians' offices, surgery centers, diagnostic centers, and like institutions are rendering services to their patients or clients and are deemed to be the consumer of the tangible personal property they purchase in rendering the services they perform. The sellers of these items are required to collect sales or use tax on sales of the tangible personal property to the providers.

(6) Notwithstanding the provisions of paragraph (5) above, the purchase by a healthcare provider of any item intended for use by the patient in his/her home and made in accordance with the requirements of Code of Alabama 1975, Section 40-9-30(d) and paragraph (4) above, shall be exempt from sales and use taxes when

sold to insured patients pursuant to valid prescriptions. Additionally, healthcare providers will not bill sales tax for sales made in accordance with Section 40-9-30(d) and paragraph (4).

(a) The burden of proof that any item purchased by a healthcare provider was intended for use and made in accordance with the requirements of Code of Alabama 1975, Section 40-9-30(d) and paragraph (4) above, shall be carried by the healthcare provider. The healthcare provider shall maintain adequate records to properly document that any items purchased by the healthcare provider was intended for use and was in fact used in accordance with the requirements of Code of Alabama 1975, Section 40-9-30(d).

(b) Healthcare providers in a clinical setting who maintain an inventory of durable medical equipment, prosthetics, orthotics, and certain medical supplies to treat patients as needed may not know at the time of purchase whether the items will be ultimately prescribed to a patient covered by Medicare, Medicaid, or a health benefit plan. Such healthcare providers may purchase qualifying items without the payment of tax to the vendor by using a properly documented Certificate of Exemption, form ST: EX-A1, issued by the department. The healthcare provider will be responsible for accruing and remitting use tax on those items that are used to provide services to non-insured patients and/or items on which they do not maintain adequate records to determine the use and taxability.

(c) Sales or use tax will continue to be due on purchases such as bandages, supplies, equipment, and other items used in delivering care to patients.

(7) Hospitals and nursing homes that provide durable medical equipment to patients are responsible for the equipment and as such are considered the users of any durable medical equipment purchased or leased on behalf of their patients. Therefore, the exemption provided does not extend to these settings in accordance with rules promulgated by Medicare.

Author: Ginger Buchanan

Authority: Section 40-2A-7(a)(5), 40-23-31, 40-23-83, Code of Alabama 1975.

History: Amended: Filed September 7, 1993; effective October 12, 1993.

Amended: Filed October 30, 2014; effective December 4, 2014.