

APA-1

TRANSMITTAL SHEET FOR NOTICE
OF INTENDED ACTION

Control: 810

Department or Agency: Alabama Department of Revenue Sales, Use & Business
Tax Division

Rule No.: 810-6-5-.29

Rule Title: Oxygen And Durable Medical Equipment Dispensed To
Medicare Recipients By Participating Providers

Intended Action Amend

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? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm
that might result from the absence of the proposed rule? NA

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

Does the proposed action relate to or affect in any manner any
litigation which the agency is a party to concerning the subject
matter of the proposed rule? No

Does the proposed rule have an 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 Services Agency.

Signature of certifying officer

Cameran Clark
Cameran Clark

Date

Monday, August 19, 2024

REC'D & FILED
AUG 19, 2024
LEGISLATIVE SVC AGENCY

**ALABAMA DEPARTMENT OF REVENUE
SALES, USE & BUSINESS TAX DIVISION**

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Revenue

RULE NO. & TITLE: 810-6-5-.29 Oxygen And Durable Medical Equipment
Dispensed To Medicare Recipients By Participating
Providers

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:

Pursuant to the passage of Act 2024-391, this rule is being amended to provide guidance on the requirement of a certificate of exemption related to durable medical equipment purchases beginning September 1, 2024.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

A public hearing will be held at 1:30 P.M. on Tuesday, October 08, 2024, via web-conference. To participate in the upcoming web-conference public hearing please contact the Tax Policy and Governmental Affairs Division at Taxpolicy@revenue.alabama.gov or 334-242-1380 to obtain the appropriate sign-in information for a specific public hearing date. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/tax-policy>.

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 following publication of the notice up until the conclusion of the hearing. Interested parties may also present their views during the web-conference.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, October 8, 2024

CONTACT PERSON AT AGENCY:

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

Cameran Clark

Cameran Clark

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

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,~~ purchases under Medicare Part B are taxable in the same manner as purchases under any other health care 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, 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 Ala. 1975.)~~

(d) ~~The provisions in paragraph (2) above were not revoked by the changes set forth in Code of Ala. 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.

(5) Effective September 1, 2024, any healthcare provider claiming an exemption shall obtain and maintain a certificate of exemption from the department in accordance with the provisions of Section 40-9-60, prior to the purchase and shall provide the certificate to the seller at the time of purchase. Any purchase made on or after September 1, 2024, shall be subject to tax, unless the healthcare provider provides the certificate to the

seller at the time of purchase ~~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)~~ (6) 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. ~~Healthcare providers will not bill sales tax for sales made in accordance with paragraph (4).~~

~~(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~~ (7) Notwithstanding the provisions of paragraph (6), 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 Ala. 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 Ala. 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 Ala. 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)~~ (8) 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 and Christy Vandevender

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-9-30, 40-9-60, 40-23-31, 40-23-83.

History: Filed June 18, 1993; certification filed September 7, 1993; effective October 12, 1993. **Amended:** Filed October 30, 2014; effective December 4, 2014. **Amended:** Filed March 9, 2016; effective April 23, 2016. **Amended:** Published ; effective .