

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on Friday, October 18, 2024, and filed with the agency secretary on Friday, October 18, 2024.

AGENCY NAME: Alabama Department of Revenue Sales, Use & Business Tax Division

INTENDED ACTION: Amend

RULE NO.: 810-6-5-.29
(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

RULE TITLE: Oxygen And Durable Medical Equipment

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted without changes

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLII, ISSUE NO. 11, AAM,
DATED FRIDAY, AUGUST 30, 2024.

STATUTORY RULEMAKING AUTHORITY: Sections 40-2A-7(a)(5), 40-9-30, 40-9-60, 40-23-31, and 40-23-83, Code of Ala. 1975

(Date Filed)
(For LRS Use Only)
REC'D & FILED
OCT 21, 2024
LEGISLATIVE SVC AGENCY

Vernon Barnett

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Certifying Officer or his or her
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

810-6-5-.29 Oxygen And Durable Medical Equipment.

(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) , 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, 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.

(d) Sales of oxygen and durable medical equipment to Medicare patients, as outlined in paragraph (2), 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.

(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.

(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), shall be exempt from sales and use taxes when sold to insured patients pursuant to valid prescriptions.

(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), 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.

(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.

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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 October 31, 2024; effective December 15, 2024.