

(3) Leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the beneficiary's physical condition.

The following are neither prosthetic nor orthotic devices—

(1) Parenteral and enteral nutrients, supplies, and equipment;

(2) Intraocular lenses;

(3) Medical supplies such as catheters, catheter supplies, ostomy bags, and supplies related to ostomy care that are furnished by an HHA as part of home health services under §409.40(e) of this chapter;

(4) Dental prostheses.

Region means those carrier service areas administered by CMS regional offices.

[57 FR 57689, Dec. 7, 1992]

§414.210 General payment rules.

(a) *General rule.* For items furnished on or after January 1, 1989, except as provided in paragraphs (c) and (d) of this section, Medicare pays for durable medical equipment, prosthetics and orthotics, including a separate payment for maintenance and servicing of the items as described in paragraph (e) of this section, on the basis of 80 percent of the lesser of—

(1) The actual charge for the item;

(2) The fee schedule amount for the item, as determined in accordance with the provisions of §§414.220 through 414.232.

(b) *Payment classification.* (1) The carrier determines fee schedules for the following classes of equipment and devices:

(i) Inexpensive or routinely purchased items, as specified in §414.220.

(ii) Items requiring frequent and substantial servicing, as specified in §414.222.

(iii) Certain customized items, as specified in §414.224.

(iv) Oxygen and oxygen equipment, as specified in §414.226.

(v) Prosthetic and orthotic devices, as specified in §414.228.

(vi) Other durable medical equipment (capped rental items), as specified in §414.229.

(vii) Transcutaneous electrical nerve stimulators (TENS), as specified in §414.232.

(2) CMS designates the items in each class of equipment or device through its program instructions.

(c) *Exception for certain HHAs.* Public HHAs and HHAs that furnish services or items free-of-charge or at nominal prices to a significant number of low-income patients, as defined in §413.13(a) of this chapter, are paid on the basis of 80 percent of the fee schedule amount determined in accordance with the provision of §§414.220 through 414.230.

(d) *Prohibition on special limits.* For items furnished on or after January 1, 1989 and before January 1, 1991, neither CMS nor a carrier may establish a special reasonable charge for items covered under this subpart on the basis of inherent reasonableness as described in §405.502(g) of this chapter.

(e) *Maintenance and servicing.* (1) *General rule.* Except as provided in paragraph (e)(2) of this section, the carrier pays the reasonable and necessary charges for maintenance and servicing of purchased equipment. Reasonable and necessary charges are those made for parts and labor not otherwise covered under a manufacturer's or supplier's warranty. Payment is made, as needed, in a lump sum based on the carrier's consideration of the item. Payment is not made for maintenance and servicing of a rented item other than the maintenance and servicing fee for other durable medical equipment, as described in §414.229(e).

(2) *Exception.* For items purchased on or after June 1, 1989, no payment is made under the provisions of paragraph (e)(1) of this section for the maintenance and servicing of:

(i) Items requiring frequent and substantial servicing, as defined in §414.222(a);

(ii) Capped rental items, as defined in §414.229(a), that are not purchased in accordance with §414.229(d); and

(iii) Oxygen equipment, as defined in §414.226.

(f) *Replacement of equipment.* Except as provided in §414.229(g), if a purchased item of DME or a prosthetic or orthotic device paid for under this subpart has been in continuous use by the patient for the equipment's reasonable

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useful lifetime or if the carrier determines that the item is lost or irreparably damaged, the patient may elect to obtain a new piece of equipment.

(1) The reasonable useful lifetime of DME or prosthetic and orthotic devices is determined through program instructions. In the absence of program instructions, carriers may determine the reasonable useful lifetime of equipment but in no case can it be less than 5 years. Computation is based on when the equipment is delivered to the beneficiary, not the age of the equipment.

(2) If the beneficiary elects to obtain replacement equipment, payment is made on a purchase basis.

[57 FR 57689, Dec. 7, 1992]

§ 414.220 Inexpensive or routinely purchased items.

(a) *Definitions.* (1) *Inexpensive equipment* means equipment the average purchase price of which did not exceed \$150 during the period July 1986 through June 1987.

(2) *Routinely purchased equipment* means equipment that was acquired by purchase on a national basis at least 75 percent of the time during the period July 1986 through June 1987.

(3) *Accessories.* Effective January 1, 1994, accessories used in conjunction with a nebulizer, aspirator, or ventilator excluded from § 414.222 meet the definitions of "inexpensive equipment" and "routinely purchased equipment" in paragraphs (a)(1) and (a)(2) of this section, respectively.

(b) *Payment rules.* (1) Subject to the limitation in paragraph (b)(3) of this section, payment for inexpensive and routinely purchased items is made on a rental basis or in a lump sum amount for purchase of the item based on the applicable fee schedule amount.

(2) Effective January 1, 1994, payment for ostomy supplies, tracheostomy supplies, urologicals, and surgical dressings not furnished as incident to a physician's professional service or furnished by an HHA is made using the methodology for the inexpensive and routinely purchased class.

(3) The total amount of payments made for an item may not exceed the fee schedule amount recognized for the purchase of that item.

(c) *Fee schedule amount for 1989 and 1990.* The fee schedule amount for payment of purchase or rental of inexpensive or routinely purchased items furnished in 1989 and 1990 is the local payment amount determined as follows:

(1) The carrier determines the average reasonable charge for inexpensive or routinely purchased items that were furnished during the period July 1, 1986 through June 30, 1987 based on the mean of the carrier's allowed charges for the item. A separate determination of an average reasonable charge is made for rental equipment, new purchased equipment, and used purchased equipment.

(2) The carrier adjusts the amount determined under paragraph (c)(1) of this section by the change in the level of the CPI-U for the 6-month period ending December 1987.

(d) *Updating the local payment amounts for years after 1990.* For each year subsequent to 1990, the local payment amounts of the preceding year are increased or decreased by the covered item update. For 1991 and 1992, the covered item update is reduced by 1 percentage point.

(e) *Calculating the fee schedule amounts for years after 1990.* For years after 1990, the fee schedule amounts are equal to the national limited payment amount.

(f) *Calculating the national limited payment amount.* The national limited payment amount is computed as follows:

(1) The 1991 national limited payment amount is equal to:

(i) 100 percent of the local payment amount if the local payment amount is neither greater than the weighted average nor less than 85 percent of the weighted average of all local payment amounts;

(ii) The sum of 67 percent of the local payment amount plus 33 percent of the weighted average of all local payment amounts if the local payment amount exceeds the weighted average of all local payment amounts; or

(iii) The sum of 67 percent of the local payment amount plus 33 percent of 85 percent of the weighted average of all local payment amounts if the local payment amount is less than 85 percent of the weighted average of all local payment amounts.