Politics and Economics

Medicare regs strangle oxygen suppliers

by Joel Solkoff

"In every industrialized nation, the movement to reform health care has begun with stories about cruelty….In Australia, a 1954 letter published in the Sydney Morning Herald *sought help for a young woman who had lung disease. She couldn't afford to refill her oxygen tank, and had been forced to ration the intake 'to a point where she is on the borderline of death.'"* —from "Getting There From Here, How Should Obama Reform Health Care?," by Atul Gawande, *The New Yorker*, Jan. 26, 2009

As President Barack Obama was giving his inaugural address emphasizing the importance of raising the quality of health care, the three suppliers of medical oxygen in Centre County still had not received regulations from Medicare on how to get paid, putting at risk the oxygen supply to more than 3,000 Centre County residents ranging in age from small children to the elderly. Specifically, Medicare still had not determined how home oxygen suppliers would be reimbursed for services to an increasing number of new patients whom doctors are trying to prevent from dying from severe lung disorders. The two most common conditions requiring medical oxygen are chronic obstructive pulmonary disease and congestive heart failure. Given the American Association of Retired Persons' estimate that 40 to 70 million baby boomers will cause Medicare rolls to swell by 77 percent over the next 25 years, the number of Centre County residents affected by these regulations is bound to escalate.

Yet Centre County oxygen patients are receiving declining levels of service and the situation is getting worse.

"This is a catastrophe waiting to happen," says Jim Young, general manager of Dick's Homecare, one of three suppliers with offices in State College. The other two suppliers are the mom-and-pop T&B Medical and the corporate giant American HomePatient. Each supplier is in danger of going out of the oxygen business or not being able to maintain a presence in Centre County.

What does that mean to medical oxygen patients and the rest of us? Eventually, fewer local trucks providing local 24-hour, 7 day-a-week service, critical for most oxygen patients. Or more calls to 911 for emergency services. Or more trips to the local emergency room. One day's stay at Mt. Nittany Medical Center costs the equivalent of a year's worth of home oxygen, a curious consequence of Medicare's efforts to reduce costs by reducing home service benefits.

How did this happen?

During the past three years, the federal government has been systematically implementing a Medicare policy that is dismantling the elaborate safety net constructed over years to protect home oxygen users. Medicare has reduced expenditures for oxygen, equipment and services.

"Oxygen patients in Centre County and throughout Pennsylvania may well experience unnecessary deaths," predicts John Shirvinsky, executive director of the Pennsylvania Association of Medical Suppliers.

Medicare, which is responsible for setting oxygen homecare policies in Centre County and throughout the country, is the largest insurance company in the United States. Last year, Medicare's budget was $431 billion; therefore any Obama initiative for health care for all Americans must take Medicare into account.

Margaret Hawn, a retired licensed practical nurse with chronic obstructive pulmonary disease and asthma, lives just over the county line in Huntingdon County. Because of her

Photo by Doug Bauman
Travis Barr, owner of T&B Medical in Boalsburg, says Medicare regulations are making it hard for him to keep supplying medical oxygen.

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Eyewitness to an inauguration transformation

by Charles Dumas

"America, in the face of our common dangers, in this winter of our hardship, let us remember these timeless words; with hope and virtue, let us brave once more the icy currents, and endure what storms may come; let it be said by our children's children that when we were tested, we refused to let this journey end, that we did not turn back nor did we falter; and with eyes fixed on the horizon and God's grace upon us, we carried forth that great gift of freedom and delivered it safely to future generations."

As President Obama spoke these words, we were like the proverbial tree planted by the waters of the reflecting pool in front of the Lincoln Memorial, but contrary to the old song we were very much moved. The president was calling upon us to carry forth "the great gift of freedom." But unlike previous administrations that had said similar sentiments as a call to an evangelical imperialism, this president seemed to be issuing a call for a movement of regeneration. We need to bring change, but that change must begin with ourselves. At least that is what we Obama marchers in D.C. and billions of others around the world hoped.

Photo by Mary Vinograd
One State College contingent to the historic inauguration included Jo Dumas, Ceci Marquette, Jade Wright, Charles Dumas and Grace Githaiga, a Humphrey Fellow from Kenya.

We arrived in Washington early on Saturday night to avoid the crowds they told us were coming. We were lucky we had a relative in nearby Bethesda. Already several thousand people were walking around the city. There were photo ops and parties everywhere: in front of the capitol, the Washington Monument, Lincoln Memorial and near the White House (still occupied by you-know-who). The spirit was celebratory and friendly. It was clear that there were many who had never before been to their capitol city and they were going to make the most of it.

The celebratory spirit continued into the next day with the brilliant staged inauguration concert at the Lincoln Memorial. It was where Dr. Martin Luther King, Jr. made his "I Have A Dream" speech in 1963, where in 1939 Eleanor Roosevelt arranged for Pennsylvanian Marian Anderson to give her concert when the Daughters of the American Revolution refused her admittance to Constitution Hall because of her color. It was where countless workers, soldiers, protesters, million man marchers, poor people, religious people, students,

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access to medical oxygen, she is able to play with her 8-year old grandson Ryan. As she sews Indiana Jones costumes and fits Ryan with superhero masks in her McAlvey's Fort home, a 45-pound concentrator directs air with a higher percentage of oxygen through tubing going to a device positioning the tube into her nostrils. T&B Medical provides Hawn with a respiratory therapist who checks the oxygen concentration of the air and makes necessary adjustments so that it matches Hawn's prescription. Such services make it possible for Hawn to breathe. She prefers to move around her house connected to the concentrator by up to 50 feet of tubing.

Three years ago, if a four-year old concentrator stopped working properly, Medicare paid suppliers to provide immediate service. Now, Medicare will reimburse the supplier for maintenance twice a year up to $60, hardly enough for gas money, regardless of how much work is required and how far the supplier has to travel. And Medicare no longer pays for tubing and other supplies. One supplier said Medicare told him to instruct customers to call 911 and go to the emergency room if they have trouble breathing.

Communication between Medicare and suppliers is so inadequate that in December 2008 the Pennsylvania Association of Medical Suppliers held a statewide workshop for its members where experts clarified the regulatory environment. More than 100 members attended to hear how and why their once-lucrative businesses had, over a three-year period, become money-losers.

The suppliers listened as Asela Cuervo, a Washington-based healthcare attorney and Cara Bachenheimer, an attorney and senior vice president for government relations at Invacare (a major equipment manufacture) described their conference calls with Joel Keiser, deputy director for Durable Medical Equipment, Prosthetics/Orthotics and Supplies at the Centers for Medicare and Medicaid Services (CMS).

CMS issues Medicare regulations. In December, the old law governing Medicare oxygen services (the Deficit Reduction Act of 2005, signed in 2006) was expiring and the new law passed last the summer (the Medicare Improvements for Patients and Providers Act) was about to take effect. Both laws left to regulators the responsibility for formulating policy (a function generally regarded as a Congressional prerogative) and for supplying details necessary to keep oxygen suppliers operating day-to-day.

The *National Journal* refers to what has now become a widespread practice as "government by regulators," turned into an art form during the second Clinton Administration. The Bush Administration adopted this practice because doing so generally does not require Congressional approval. Also, efficiently-used regulatory authority is considerable and accountability limited.

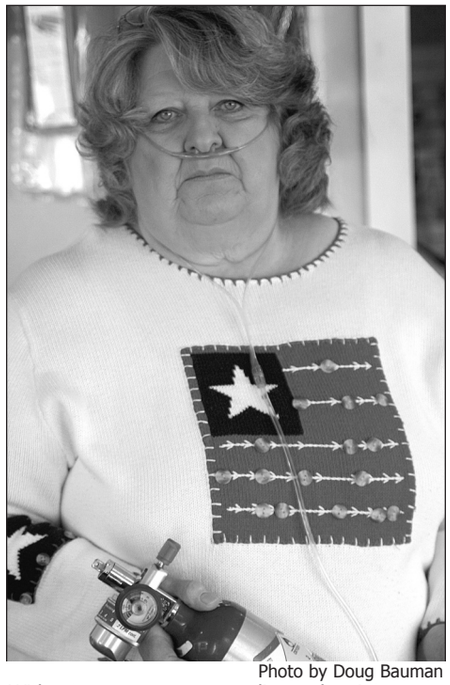

Photo by Doug Bauman
Without proper oxygen supplies and maintenance Margaret Hawn cannot get out of the house or tend to her grandson.

CMS's Keiser is a regulator whose word has become law when it comes to deciding what oxygen-related services Medicare will pay for and what procedures suppliers must meet to get paid. Keiser's office had delayed issuing regulations. Instead, he has held periodic conference calls with Cuervo, Bachenheimer and others to give them a sense of Medicare's direction.

"The problem was that one day Keiser would tell us one thing and the next day he would say exactly the opposite," Cuervo explained to the oxygen suppliers. "That left us very confused and with no sense of direction."

The safety net erodes

Until three years ago, each oxygen supplier provided basic services which formed a safety net for home oxygen patients:

—A concentrator which weighed 40 to 60 pounds and filled a room with additional oxygen per the physician's prescription.

—An on-staff respiratory therapist who traveled to the patient's home to make sure the oxygen level is correct.

—Maintenance people, plus trucks and equipment, capable of fixing concentrators, available 24 hours a day, seven days a week.

—Oxygen cylinders that gave the patient the ability to leave home. Suppliers refilled and delivered cylinders.

—Back up systems in case of electrical or equipment failure.

—Accreditation with an approved professional association, an expensive and detailed process for proving to Medicare and other insurance providers that the supplier has the knowledge, personnel and procedures in place to serve medical oxygen customers.

—Portability, allowing the customer to switch service providers at any time anywhere in the United States and still receive the full range of respiratory services.

The centerpiece of the medical oxygen supplier system was the monthly rental of oxygen concentrators. The supplier owned the concentrator and rented it to the patient (or more accurately the insurance company) for about $200 a month. In return for the rental, the supplier encouraged patients able to leave their homes to do so by providing without charge relatively lightweight cylinders and supplied (without additional charge) the other services as a package.

Then Medicare reduced the payment to oxygen suppliers from $200 a month in 2006 to $176 a month in 2009. In addition, under the current Medical Improvements for Patients and Providers Act (MIPPA), Medicare obliged suppliers to honor the terms of a five-year contract, but only paid them for three.

Although generally speaking, suppliers were required to provide free service for the remaining two years, in some instances MIPPA, as interpreted by the regulators, made allowances for reimbursing certain costs. One allowed cost was the refilling of oxygen cylinders during the last two years of the contract. Oxygen cylinders give patients the ability to leave the house. Previously, under the safety net, cylinders were delivered in unlimited numbers. Under MIPPA, regulators implemented a low reimbursement fee with burdensome requirements. Several suppliers decided that for budget reasons they would limit the number of cylinders provided to customers in that fourth and fifth year.

Hawn, the grandmother from McAlvey's Fort, estimates that each portable cylinder lasts her three hours. She is now limited to six cylinders per month.

"This means I can't go outside as much as I like," she said. Her mobility is also affected by complicated new procedures making it difficult for patients to receive technologically improved and easier-to-use equipment. Hawn said she would prefer having a relatively new portable concentrator (weighing less than 10 pounds).

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"The paperwork would be a nightmare and I doubt we could get it through," explained supplier Travis Barr at T&B Medical.

Media interest was intense when MIPPA passed Congress last summer, especially when Sen. Edward Kennedy, in the midst of brain cancer treatment, appeared on the floor of the Senate against his physicians' advice and succeeded in getting Congress to override President George Bush's veto of the bill. Kennedy's efforts were geared toward reversing a decline in pay for physicians, a major feature of MIPPA, but MIPPA also contains the current Medicare legislation setting medical oxygen policy.

MIPPA made relatively modest changes to the oxygen provisions hidden in the massive Deficit Reduction Act of 2005 (DRA). The DRA included provisions to protect arctic wildlife, prepare the public for digital television transmission and fund agriculture. The Bush Administration rammed the legislation through Congress in the hopes that damage done to the safety net for oxygen users would go unnoted. That damage was done in less than a page of the 1,010-page bill.

The critical language of the law reads: "Payment for oxygen equipment (including portable oxygen equipment) under this paragraph may not extend over a period of continuous use (as determined by the Secretary [of Health and Human Services]) of longer than 36 months…. On the first day that begins after the 36th continuous month during which payment is made for the equipment under this paragraph, the supplier of the equipment shall transfer title to the equipment to the individual.

"After the supplier transfers title to the equipment…payments for oxygen shall continue to be made… for the period of medical need; and…maintenance and servicing payments shall, if the Secretary determines such payments are reasonable and necessary, be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the equipment), and such payments shall be in an amount determined to be appropriate by the Secretary…"

The power to pay or not to pay now resided with the Secretary of Health and Human Services, and what Medicare used to rent from suppliers, patients would now own.

The law went into effect more than a month before President Bush signed it. The law gave ownership of condensers to patients after three years, effectively dismantling the safety net. In a remarkably vague manner, given the drastic action the Bush Administration had taken, the law required patients, suppliers, and Medicare to figure out how to make the patient-owned condensers work, what other respiratory services were required and how much to pay for them.

"The idea seems very simple if you look at the numbers," Shirvinsky, of the Pennsylvania Association of Medical Suppliers, explained. "You look at the Internet; you can buy an oxygen concentrator for $600." On the other hand the cost of renting it for a year was $2,400 (a rate which has since been significantly reduced). So, on the face of it, Medicare—and by extension the taxpayers—would enjoy significant savings if the patient bought a concentrator for $600 rather than rent it for $2,400 a year.

"The other way of looking at it," Shirvinsky said, "is that the UPS guy can deliver the concentrator. What the patient has is a box which must be unloaded, installed, maintained and fit with the proper tubing etc. Generally, the patient is elderly or disabled and requires oxygen," he added, implying the patient has neither the endurance nor the expertise to set up the equipment.

The threat to suppliers

Centre County's three oxygen suppliers exemplify the range of suppliers in the industry:

—T&B Medical has six employees including local owners Travis and Barbara Barr. For the past eleven years, T&B Medical has been operating out of a single location, on South Atherton. T&B Medical serves 48 oxygen patients.

—Dick's Home Care has been a family-owned business since 1929. Dick's is based in Altoona and has seven homecare locations and three pharmacies in 13 Pennsylvania counties. Dick's employs seven people at its Benner Pike location, serves 171 oxygen patients in Centre County area and 1,000 patients throughout the Commonwealth.

—American HomePatient, Inc. is a public corporation based in Brentwood, Tenn. As of Sept. 30, 2008, American Homepatient had annual revenues of $353 million. Nationwide, the company has 2,362 full-time employees, providing home services to patients through 245 centers in 33 states. One of these centers is on Commercial Boulevard in State College and serves some 2,800 local patients, by far the largest number of home medical oxygen patients in Centre County.

Even corporate giant American Homepatient, Inc. has been suffering financially. In the past three years, the company's stock has dropped from $3 a share to 17 cents a share according to Securities and Exchange Commission filings.

Until three years ago, home users of medical oxygen were assured reliable services without having to worry about the details. Physicians signing certificates of medical necessity could trust that their patients' needs were being met when their nurses at Centre Medical and Surgical Associates, social workers at Mt. Nittany Medical Center or other professionals called one of the three local medical oxygen suppliers.

The immediate impact of the Medicare changes has been on Centre County's three oxygen suppliers who have tried to protect their customers and the medical community from the effect of Congress' on-going efforts to slash the $431 billion a year Medicare program, costs that Medicare opponents refer to as "out of control." Oxygen and other durable medical equipment, including wheelchairs, power chairs, and walkers, accounted for $7 billion, or less than 2 percent of the total. Medicare is federal insurance for the elderly and disabled who are

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