

PROCEDURE FOR IMPLEMENTATION OF THE EXEMPTION FOR DURABLE MEDICAL EQUIPMENT

TPP 93-1

ISSUE:

Application of the Arizona transaction privilege tax on income derived from the sale of durable medical equipment and related items.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1310.01.A.13 provides an exemption from the transaction privilege tax imposed under the retail classification for:

Durable medical equipment which has a federal health care financing administration common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 13, 17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

This statute is to be applied retroactively to tax reporting periods beginning from and after December 31, 1979.

A.R.S. § 42-1409.A.19 is the counterpart statute for the use tax exemption.

Social Security (Soc. Sec.) Act § 1861(n) provides that "durable medical equipment" includes iron lungs, oxygen tents, hospital beds, wheelchairs, and seat-lift chair mechanisms.

Soc. Sec. Act § 1834 provides special payment rules for durable medical equipment.

42 Code of Federal Regulations (CFR) § 405.512 provides the carriers' procedural terminology and coding systems.

DISCUSSION:

A.R.S. § 42-1310.01.A.13 provides that durable medical equipment must have a health care procedure code (HCPC), be reimbursable by Medicare and must be prescribed by a podiatrist, physician, osteopathic physician or homeopathic physician licensed under Title 32 of the Arizona Revised Statutes.

Pursuant to 42 CFR § 405.512, the federal health care financing administration common procedure code (HCPC) is a code designed to provide physicians with a common language that describes the nature and levels of service provided and that can serve as a basis for coverage and payment determinations. The Health Care Financing Administration (HCFA) is the branch of the Department of Health and Human Services that assigns the codes to the durable medical equipment. HCFA also makes the coverage determinations concerning durable medical equipment reimbursable by Medicare.

Pursuant to Medicare Carriers Manual § 2100.1, "Definition of Durable Medical Equipment," durable medical equipment is equipment which (a) can withstand repeated use, and (b) is primarily and customarily used to serve a medical purpose, and (c) generally is not useful to a person in the absence of an illness or injury, and (d) is appropriate for use in the home.

In general, durable medical equipment is reimbursable by Medicare if the following conditions are met:

1. The equipment satisfies the definition of durable medical equipment (Medicare Carriers Manual § 2100.1);
2. The equipment is necessary for the treatment of the patient's illness or injury or to improve the functioning of a malformed body member (Medicare Carriers Manual § 2100.2); and,
3. The equipment is used in the patient's home (Medicare Carriers Manual § 2100.3).

Soc. Sec. Act § 1834 describes the rules for payment by Medicare for durable medical equipment. For example, some durable medical equipment is only reimbursed if purchased, some equipment can be purchased or rented and some equipment can only be rented. Also, equipment must be prescribed by a physician, which means a physician must demonstrate by documentation the medical need for such equipment. Patients must satisfy certain criteria for different durable medical equipment.

In general, the HCPC code is for payment determinations and, therefore, not required by Medicare for reimbursement purposes. However, a code is eventually assigned to the

equipment if Medicare intends to reimburse for it. For transaction privilege tax exemption purposes, all equipment must have a code to qualify for the durable medical equipment exemption.

A.R.S. § 42-1310.01.A.13 goes on to provide that "durable medical equipment" is equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury, and is appropriate for use in the home.

Durable equipment is defined by Medicare as equipment which can withstand repeated use. Medical supplies which are expendable by nature, such as incontinent pads, lambs wool pads, catheters, ace bandages, elastic stockings, surgical face masks, irrigating kits, sheets and bags are not considered durable within the meaning of the definition (Medicare Carriers Manual § 2100.1.A).

Under Arizona statutory provisions, supply items are not includable as exempt under the provision for durable medical equipment. The equipment must meet all statutory tests in order to be exempt from the tax including the provision for withstanding repeated use. Accessory and supply type items do not meet this requirement. A.R.S. § 42-1310.01.A.13.

Items such as wheelchairs, hemodialysis equipment, iron lungs, respirators, intermittent positive pressure breathing machines, medical regulators, oxygen tents, crutches, canes, trapeze bars, walkers, inhalators, nebulizers, commodes, suction machines and traction equipment presumptively constitute durable medical equipment (Medicare Carriers Manual 2100.1.B.1).

Equipment which is new on the market will require an HCPC code to qualify for the durable medical equipment exemption.

Prior approval requirements, pursuant to the Omnibus Budget Reconciliation Act of 1990, require that a list be prepared detailing items which are frequently subject to unnecessary utilization. The law specifies that at minimum the list include seat-lift mechanisms, transcutaneous electrical nerve stimulators (TENS), and motorized scooters. Payment by Medicare will not be made unless approval is given for items on the list (Soc. Sec. Act § 1834 (a)(15)).

Equipment which is primarily and customarily used for a nonmedical purpose may not be considered "medical" equipment for exemption purposes. Equipment which is primarily used for comfort or physical fitness and self-help devices are considered nonmedical. First-aid or precautionary type equipment and training equipment, such as speech teaching machines and braille training texts, are also considered nonmedical (Medicare Carriers Manual 2100.B.2).

SUMMARY:

In order to qualify under the statutory exemption, durable medical equipment must have an HCPC code, be reimbursable by Medicare and be prescribed by podiatrists, physicians, osteopathic physicians or homeopathic physicians licensed under Title 32. If the equipment does not possess an HCPC code, it is necessary to obtain an HCPC code from Medicare to qualify for the exemption. In addition, durable medical equipment is equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of an illness or injury and is appropriate for use, and is used, in the home.

All elements of the definition must be satisfied in order for the equipment to be exempt under this statute. Furthermore, all durable medical equipment must meet Medicare's provisions stipulated in the law, regulations and HCFC manuals.

If the medical equipment does not meet the statutory definition of "durable medical equipment," the sale of such equipment is subject to transaction privilege or use tax unless it qualifies for exemption under another statutory provision.

Paul Waddell, Director

Signed January 11, 1993