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Oxygen Suppliers Fight to Keep a Medicare Boon

By [CHARLES DUHIGG](#)

Millions of people with [respiratory diseases](#) have relied on oxygen equipment, delivered to their homes, to help them breathe. A basic setup, including three years of deliveries of small oxygen tanks, can be bought from pharmacies and other retailers for as little as \$3,500, or about \$100 a month.

Unless, that is, the buyer is [Medicare](#), the government health care program for older Americans.

Despite enormous buying power, Medicare pays far more. Rather than buy oxygen equipment outright, Medicare rents it for 36 months before patients take ownership, and pays for services that critics say are often unnecessary.

The total cost to taxpayers and patients is as much as \$8,280, or more than double what somebody might spend at a drugstore.

The high expense of oxygen equipment — which cost Medicare over \$1.8 billion last year — is hardly an anomaly.

Medicare spends billions of dollars each year on products and services that are available at far lower prices from retail pharmacies and online stores, according to an analysis of federal data by The New York Times. A comparison of Medicare figures with retail catalogs reveals dozens of instances of the program's paying above-market costs.

For example, last year Medicare spent more than \$21 million on pumps to help older and disabled men attain erections, paying about \$450 for the same device that is available online for as little as \$108. Even for something as simple as a walking cane, which can be purchased online for about \$11, the government pays \$20, according to government data.

These widespread price discrepancies, including those for oxygen services, have been noted in dozens of regulatory reports.

But when officials and politicians have tried to cut these costs, they have often encountered a powerful foe: the companies that sell these devices, who ask their elderly customers to serve, in effect, as unpaid lobbyists, calling and writing to their representatives in Congress, protesting at

rallies, and even participating in political attacks against individual lawmakers who take on the issue.

As the nation's elderly population grows, dozens of industries have tried to harness the political might of older Americans for corporate goals. Physician groups, medical device manufacturers, insurance companies and other businesses have rallied aging voters to protest even minor legislative changes.

“These industries rely on a basic threat: If you mess with us, we can turn the seniors against you,” said former Senator [Alan K. Simpson](#), Republican of Wyoming, who tried cutting Medicare payments while he was in Congress. “Angering seniors is the quickest route to political [suicide](#).”

Many of those battles focus on the \$427 billion Medicare program. Because of fierce patient and corporate lobbying, for instance, Medicare still pays prices for many items that are based on rates established in the early 1980s, when many devices were much more expensive than they are now.

Even as the actual cost of many machines and services has fallen, Medicare has only occasionally lowered what it pays.

“There's no question that parts of Medicare are mispriced,” said Herb B. Kuhn, deputy administrator of the Centers for Medicare and [Medicaid](#) Services, the agency overseeing Medicare. Mr. Kuhn said the program had made price refinements and was in the process of carrying out a competitive bidding system to help bring down the cost of products like oxygen equipment.

But, Mr. Kuhn acknowledged, officials have confronted political and logistical obstacles in adjusting a program that last year provided services to 43 million older and disabled Americans.

The battles over oxygen equipment highlight many of those challenges.

Medicare pays the same rental amount to provide each oxygen patient with equipment and services, regardless of how often they are used.

For patients who require constant monitoring and frequent deliveries of tanks, high prices may be justified. And for people who use equipment for only a few months, renting may be cheaper than buying.

But Medicare overpays for the many patients who require less care, like those who use equipment only at night or during vigorous activities, regulators and lawmakers say.

Earlier this decade, legislators ordered the government agency to pay less and use the competitive bidding program.

Then the oxygen industry started fighting back. Companies organized themselves into a deep-pocketed lobbying force that has defeated attempts to cut Medicare's rates, and has attacked the competitive bidding program.

The companies that profit from Medicare say their tactics are appropriate and the payments they receive are fair.

When the government pays for oxygen equipment, "it also gets an enormous number of other services that are keeping patients out of [hospitals](#)," said Peter Kelly, president of a large oxygen supply company. "Those avoided hospital visits end up saving Medicare billions."

For instance, Mr. Kelly's company, Pacific Pulmonary Services, whose customers are mostly Medicare patients, provides everyone with access to 24-hour emergency technicians, weekly check-in phone calls and other services that might not be available to people who buy equipment on their own.

Oxygen suppliers that bill Medicare also incur significant administrative costs, Mr. Kelly said.

"At some point, shrinking Medicare reimbursements will inevitably impact our ability to offer this high level of patient care," Mr. Kelly said.

But lawmakers have argued that companies are offering extra services to justify high fees.

"I would guess we're grossly overpaying for about 80 percent of the people who receive these services," said Representative Pete Stark, a California Democrat and senior member of the Ways and Means Committee who recently pushed to cut Medicare's oxygen spending.

More Patients, More Money

A study released last year by the office of the United States inspector general found that oxygen companies checked equipment for malfunctions much more frequently than manufacturers recommended and performed routine maintenance that patients could do on their own. Executives at oxygen companies challenge those findings.

"It's costs like these that are putting the whole Medicare program at risk," Mr. Stark said.

As America becomes an older nation, it is also, by some measures, becoming sicker. Lung diseases and other breathing impairments, which are often a result of [smoking](#), today affect an estimated 35 million Americans, up 40 percent since 2002, according to the American Lung Association.

For Medicare entrepreneurs like Mr. Kelly, these trends have provided opportunities.

His company operates in 15 states, delivering oxygen tanks and equipment to about 45,000 patients. Last year, Mr. Kelly's firm collected more than \$100 million from Medicare for delivering various equipment and services.

“When Katrina hit New Orleans and the fires hit Southern California, oxygen suppliers rushed in to make sure patients had enough oxygen,” Mr. Kelly said. “There's no one else standing by to make sure these patients can breathe.”

Other companies that sell medical equipment have also flourished. More than 114,000 home medical equipment suppliers billed Medicare last year, according to [HME News](#), an industry newsletter. Over 1,500 of them collected more than \$1 million. One of the largest oxygen equipment suppliers, the publicly traded Lincare, collected over \$789 million from Medicare last year, according to corporate filings.

Large private investment firms have also jumped in. Welsh, Carson, Anderson & Stowe, a \$16 billion private equity group, has invested in numerous companies that profit from Medicare. One of its executives is Thomas A. Scully, who ran Medicare for almost three years, until 2003.

The government's overall bill for Medicare soared last year to an average of \$8,568 per beneficiary, up from \$5,522 in 1999, an increase that outpaces inflation by 34 percent.

The rapid increase has drawn the attention of lawmakers. In 1997 and 2003, Congress lowered oxygen reimbursements by a total of about 39 percent.

At the time, oxygen executives acknowledge, they were disorganized and relatively politically naïve. Since then, companies that manufacture and sell home medical equipment have spent more than \$18 million lobbying Congress on various issues, according to federal records.

“We're willing to spend what it takes to make sure we are heard,” said Joseph S. Lewarski of [Invacare](#), an Ohio manufacturer of oxygen equipment.

Strength in Numbers

While any industry can hire lobbyists, few can marshal tens of thousands of older citizens to accuse politicians of trying to take away their lifelines. That ability, say lawmakers and their staff members, is the real clout of home medical equipment companies and other industries that sell to the elderly.

When Congress proposed cutting oxygen payments last year, for instance, trade groups and companies began warning patients that if the law changed, there might be no one to repair their equipment or provide emergency services.

“I’m scared to death that they are going to cut us off,” said Beverly Karagin of Morning Sun, Iowa, whose husband has used oxygen equipment for about 11 years. Mrs. Karagin wrote her senators and congressman after her oxygen delivery company told her about proposed payment cuts, she said.

“If something goes wrong with the machine and Medicare won’t pay to repair it, my husband could die,” Mrs. Karagin said in an interview. “I told them that this is a matter of life and death.”

Lawmakers say such fears are unfounded. After patients take ownership of the equipment, Medicare pays for repairing machines and backup systems.

Even so, last year “our office received over a thousand phone calls from oxygen patients in two days, and all of them said they were going to die if we passed this law,” said a high-ranking Congressional staff member who requested anonymity because he was not authorized to speak to the media.

Other lobbying efforts have attacked individual legislators, accusing them of harming elderly Americans.

VGM & Associates, which provides back-office services to home medical equipment providers, helped pay for commercials last year that said [Bill Thomas](#), then a Republican representative from California, was abandoning elderly war veterans. Mr. Thomas, who retired last year, had led an effort to cut Medicare’s oxygen rates.

“Bill Thomas wants to hurt older and disabled Americans,” the commercial claimed.

Ron Bendell, president of VGM, said he “wanted to let Congress know we won’t take this lying down.”

Such lobbying tactics have drawn sharp criticism from Capitol Hill.

But they have also been effective.

On Dec. 18, 2005, Mr. Thomas inserted a midnight change into the \$40 billion Deficit Reduction Act to cut oxygen reimbursements. At the time, Medicare paid for unlimited equipment rentals. Mr. Thomas sought to cap those rentals at 18 months, which would save the government hundreds of millions of dollars each year.

Before the sun rose, Senator George V. Voinovich, an Ohio Republican who has received tens of thousands of dollars in political contributions from executives at oxygen companies, called another lawmaker to discuss how to block the proposal, according to the senator’s staff members.

He then informed lawmakers overseeing the legislation — which had essentially already been approved by both houses of Congress — that he would upend the entire bill if the oxygen cuts and other modifications were not scaled back, according to staff members who worked closely on the legislation.

“We literally had the legislation signed and ready to go, and then Voinovich threatened to kill it all,” said a high-ranking Congressional staff member who had direct involvement in the process, but requested anonymity to avoid angering Senator Voinovich.

Congress gave into the threat, consenting to 36 months of oxygen payments before ownership transfers to patients, the system that exists today.

A spokesman for Senator Voinovich acknowledged that the late-night phone call had occurred and said the lawmaker “will never have a problem sticking up for the elderly and patients when Congress tries to give them the short end of the stick.”

More recent attempts to cut oxygen reimbursements have also failed. President Bush, in his 2007 proposed budget, asked Congress to cut Medicare’s oxygen payments by 63 percent, and the House of Representatives passed legislation halving Medicare’s oxygen rates.

Neither of those proposals made it into law.

“It doesn’t seem sensible that a small industry should be able to manipulate the entire U.S. Congress into overpaying for oxygen,” Representative Stark said. “But that’s the world we live in now.”

Similar tactics have doomed efforts to rein in spending on dozens of other Medicare items, as well. Lawmakers or regulators have proposed changing payment policies for motorized wheelchairs, [mental health](#) services, X-rays, diabetic supplies, orthotics, hospital beds, [nutrition](#) drinks, allergy therapies, ambulance trips and numerous other products and services.

Competitive Bidding

Some legislators say the only way to lower Medicare’s payments is to bypass the political process altogether, to insulate individual politicians from blame.

Last year, the Centers for Medicare and Medicaid Services, the agency overseeing Medicare, announced guidelines for a national competitive bidding system for home medical equipment.

In 10 metropolitan areas, Medicare requested that suppliers of some products, like oxygen, submit bids. The agency is in the process of setting payments based on those submissions. The companies proposing the highest prices will be excluded from the program.

The national competitive bidding process was to begin last January, but was repeatedly delayed. Mr. Kuhn, the Medicare official, blamed technological difficulties for those delays.

But other high-ranking Medicare officials, speaking on the condition that they not be identified, said political pressure from medical equipment companies was also to blame for the slow start.

Medicare has also tried to improve the quality of services these companies provide. In 2005, the agency released more than 100 pages of proposed requirements for equipment suppliers participating in Medicare. But, after industry executives complained to the agency and to politicians, the final requirements were cut to 14 pages, eliminating numerous standards, and undermining the initiative's goals, some Medicare officials say.

A spokesman for the agency defended those cuts, and said the final requirements maintained most of the standards.

Some within Congress say the answer is not competitive bidding at all, but rather that lawmakers must resist political pressure as they try to keep Medicare's costs down.

"All you have to do is pick up an equipment catalog or search for 'oxygen device' on [eBay](#) to figure out better prices than what we're currently paying," Mr. Stark said.

Such concerns are becoming more common as the population ages and Congress increasingly confronts pressures from elderly voters, lawmakers say. But unless legislators make hard choices, costs will spiral out of control.

"This isn't rocket science," Mr. Stark said. "We're the government. This is supposedly what we get paid to do."

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