

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services



The Centers for Medicare & Medicaid Services (CMS) has made changes to the Medicare Overpayment Notification Process. If an outstanding balance has not been resolved, providers previously received three notification letters regarding Medicare Overpayments, an Initial Demand Letter (1st Letter), a Follow-up-Letter (2nd Letter), and an Intent to Refer Letter (3rd Letter). CMS would send the second demand letter to providers 30 days after the initial notification of an overpayment. Recent review has determined that the majority of providers respond to the initial demand letter and pay the debt. Currently recoupment action happens 41 days after the initial letter. The remittance advice which describes this action serves as another notice to providers of the overpayment. Therefore, effective Tuesday, November 1, 2011, the second demand letters are no longer being sent to providers. Provider appeal rights will remain unchanged. If an overpayment is not paid within 90 days of the initial letter, providers will continue to receive a letter explaining CMS' intention to refer the debt for collection.

MLN Matters® Number: MM7167

Related Change Request (CR) #:7167

Related CR Release Date: January 20, 2012

Effective Date: February 21, 2012

Related CR Transmittal #: R403PI

Implementation Date: February 21, 2012

Claims against Surety Bonds for Suppliers of Durable Medical Equipment (DME), Prosthetics, Orthotics and Supplies (DMEPOS)

Note: This article was revised on June 6, 2014, to add a reference to MLN Matters® article MM8636 (<http://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnmattersarticles/downloads/MM8636.pdf>) to alert DMEPOS suppliers to the updated procedures that DME MACs will now follow in pursuing payment under a surety bond. All other information remains the same.

Provider Types Affected

This MLN Matters® Article is intended for DMEPOS suppliers that are required to obtain and maintain a surety bond as a condition of their enrollment in the Medicare program.

Disclaimer

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Provider Action Needed

This article is based on Change Request (CR) 7167, which outlines the procedures for CMS to make a claim against a DMEPOS supplier's surety bond. Be certain you are aware of these clarifications.

Background

In order to enroll in and to remain enrolled in the Medicare program DMEPOS suppliers must obtain and maintain a surety bond in the amount of \$50,000 (unless an elevated bond amount is required) under 42 Code of Federal Regulations (CFR) section 424.57(d).

Key Points

According to 42 CFR section 424.57(d), a surety must pay the Centers for Medicare & Medicaid Services (CMS) - within 30 days of receiving written notice to do so - the following amounts up to the full penal sum of the bond:

- The amount of any unpaid claim, plus accrued interest, for which the DMEPOS supplier is responsible; and
- The amount of any unpaid claim, civil monetary penalty (CMP), or assessment imposed by CMS or the Office of the Inspector General (OIG) on the DMEPOS supplier, plus accrued interest.

For purposes of this surety bond requirement, an "unpaid claim" is defined as an overpayment (including accrued interest, as applicable) made by the Medicare program to the DMEPOS supplier for which the supplier is responsible.

A surety is liable for any overpayments incurred during the term of the surety bond. This includes overpayment determinations made on or after the surety bond effective date. These overpayment determinations can relate to payments made on or after March 3, 2009

Additional Information

The official instruction, CR 7167, issued to your DME/MAC regarding this change, may be viewed at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R403PI.pdf> on the CMS website.

If you have any questions, please contact your DME/ MAC at their toll-free number, which may be found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/provider-compliance-interactive-map/index.html> on the CMS website.

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Medicare's surety bond requirements are summarized in detail in article MM6392 at <http://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnmattersarticles/downloads/MM6392.pdf> on the CMS website.

You may want to review MM7744 (<http://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnmattersarticles/downloads/MM7744.pdf>) which outlines procedures for making a claim against DMEPOS suppliers' surety bond.

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