



Time is running out for suppliers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) who bill Medicare under Part B to obtain accreditation by the **September 30, 2009 deadline** or risk having their Medicare Part B billing privileges revoked on October 1, 2009. While the accreditation process takes on average 6-7 months to complete, the process could take as long as 9 months to complete. Accordingly, DMEPOS suppliers should contact an accreditation organization right away to obtain information about the accreditation process and submit an application. Further information on the DMEPOS accreditation requirements along with a list of the accreditation organizations and those professionals and other persons exempted from accreditation may be found at <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/downloads/DeemedAccreditationOrganizationsCMB.pdf> on the CMS website.

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Surety Bonds for Suppliers of Durable Medical Equipment, 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 suppliers submitting claims to Medicare DME Medicare Administrative Contractors (MACs) for services provided to Medicare beneficiaries.

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Provider Action Needed

This article is based on Change Request (CR) 6392. The Centers for Medicare & Medicaid Services (CMS), via the Medicare Program Integrity Manual, Chapter 10, alerts **certain DMEPOS suppliers that they need to obtain a surety bond as a prerequisite for enrolling and maintaining enrollment in the Medicare program.** Be sure you are familiar with and in compliance with Medicare's surety bond requirements as summarized in this article and as detailed in CR 6392.

Background

Effective May 4, 2009, DMEPOS suppliers submitting: (1) an initial enrollment application to enroll in the Medicare program for the first time, (2) an initial application to establish a new practice location, or (3) an enrollment application to change the ownership of an existing supplier, are required to obtain and submit a copy of its required surety bond to the NSC with their CMS-855S enrollment application.

All existing DMEPOS suppliers subject to the bonding requirement must submit a copy of the required surety bond to the NSC no later than October 2, 2009.

Exceptions

All DMEPOS suppliers are subject to the surety bond requirement, except:

- Government-operated DMEPOS suppliers are exempted if the supplier has provided CMS with a comparable surety bond under State law. (All Indian Health Service (IHS) facilities that are not wholly owned and operated by a tribe are exempt.)
- State-licensed orthotic and prosthetic personnel (which, for purposes of the surety bond requirement, does not include pedorthists) in private practice making custom- made orthotics and prosthetics are exempted if:
 - The business is solely-owned and operated by the orthotic and prosthetic personnel, and
 - The business is only billing for orthotic, prosthetics, and supplies.
 - Physicians and non-physician practitioners, as defined in section 1842(b)(18) of the Social Security Act, are exempted if the items are furnished only to the physician or non-physician practitioner's own patients as part of his or her physician service. The non-physicians covered under this exception are: physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers, clinical psychologists, and registered dietitians or nutrition professionals.
 - Physical and occupational therapists in private practice are exempted if:

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- The business is solely-owned and operated by the physical or occupational therapist;
- The items are furnished only to the physical or occupational therapist's own patients as part of his or her professional service; and
- The business is only billing for orthotics, prosthetics, and supplies.

Amount and Basis of the Surety Bond

The surety bond must be in an amount of no less than \$50,000 per National Provider Identifier (NPI). Since DMEPOS suppliers must obtain an NPI by practice location, except for sole proprietorships, an organizational DMEPOS supplier with 10 locations would be required to secure a \$500,000 surety bond.

Suppliers will be required to maintain an **additional** elevated surety bond amount of \$50,000 **for each final adverse action** imposed against it within the 10 years preceding enrollment or reenrollment. This amount is in addition to, and not in lieu of, the base \$50,000 amount that must be maintained.

A supplier may obtain a single bond that encompasses multiple locations. For instance, if a supplier has 10 separately-enrolled DMEPOS locations, it may obtain a \$500,000 bond that covers all 10 locations. Likewise, if a supplier seeks to enroll a new location, it may submit to the NSC an amendment or rider to the existing bond, rather than a new, separate surety bond.

Bond Terms

Specific terms that the bond must contain include:

- A guarantee that the surety will - within 30 days of receiving written notice from CMS containing sufficient evidence to establish the surety's liability under the bond of unpaid claims, civil monetary penalties (CMPs), or assessments - pay CMS a total of up to the full penal amount of the bond in the following amounts:
 - The amount of any unpaid claim, plus accrued interest, for which the DMEPOS supplier is responsible, and
 - The amount of any unpaid claims, CMPs, or assessments imposed by CMS or the OIG on the DMEPOS supplier, plus accrued interest.
- A statement that the surety is liable for unpaid claims, Civil Monetary Penalties (CMPs), or assessments that occur during the term of the bond;
- A statement that actions under the bond may be brought by CMS or by CMS contractors;
- The surety's name, street address or post office box number, city, state, and zip code; and

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- Identification of the DMEPOS supplier as the Principal, CMS as the Obligee, and the surety (and its heirs, executors, administrators, successors and assignees, jointly and severally) as the surety.

A copy of the bond agreement, as well as any certificates of proof, must be submitted.

Sureties

The list of sureties from which a bond can be secured is found at the Department of the Treasury's "Listing of Certified (Surety Bond) Companies" website at http://www.fms.treas.gov/c570/c570_a-z.html on the Internet. For purposes of the surety bond requirement, these sureties are considered "authorized".

Additional Information

If you have questions, please visit the National Supplier Clearinghouse's "Frequently Asked Questions" page at <http://www.palmettogba.com/PALMETTO/PALMETTO.NSF/DocsCat/Home>. (When you get to this page, click on the FAQ link, followed by the "National Supplier Clearinghouse" link.)

The official instruction (CR6392) issued to your Medicare DME MAC, is available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R287PI.pdf> on the CMS website. Included with CR 6392 is the actual revision to Chapter 10 of the Medicare Program Integrity Manual, which has further details on the surety bond requirement.

You may want to review MM7167 (<http://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnmattersarticles/downloads/MM7167.pdf>) which clarifies the procedures for CMS to make a claim against a DMEPOS supplier's surety bond.

You may want to review MM6854 (<http://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnmattersarticles/downloads/MM6854.pdf>) which clarifies situations where surety bonds must be reported to the National Supplier Clearinghouse

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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