

<b>CMS Manual System</b>	<b>Department of Health &amp; Human Services (DHHS)</b>
<b>Pub 100-08 Medicare Program Integrity</b>	<b>Centers for Medicare &amp; Medicaid Services (CMS)</b>
<b>Transmittal 287</b>	<b>Date: MARCH 27, 2009</b>
	<b>Change Request 6392</b>

**SUBJECT: Surety Bonds for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)**

**I. SUMMARY OF CHANGES:** This change request incorporates instructions related to the requirement in 42 CFR 424.57(d) that certain DMEPOS suppliers obtain a surety bond as a prerequisite for enrolling and maintaining one's enrollment in the Medicare program.

**NEW / REVISED MATERIAL**

**EFFECTIVE DATE: APRIL 6, 2009**

**IMPLEMENTATION DATE: APRIL 6, 2009**

*Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.*

**II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)**

**R=REVISED, N=NEW, D=DELETED**

<b>R/N/D</b>	<b>CHAPTER / SECTION / SUBSECTION / TITLE</b>
<b>R</b>	10/Table of Contents
<b>N</b>	10/21.7/Surety Bonds

**III. FUNDING:**

**SECTION A: For Fiscal Intermediaries and Carriers:**

**SECTION B: For Medicare Administrative Contractors (MACs):**

The Medicare administrative contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the contracting officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the contracting officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

**IV. ATTACHMENTS:**

**Business Requirements  
Manual Instruction**

*\*Unless otherwise specified, the effective date is the date of service.*

# Attachment - Business Requirements

Pub. 100-08	Transmittal: 287	Date: March 27, 2009	Change Request: 6392
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**SUBJECT: Surety Bonds for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)**

**Effective Date: April 6, 2009**

**Implementation Date: April 6, 2009**

## I. GENERAL INFORMATION

**A. Background:** This change request implements CMS-6003-F, entitled “Medicare Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS),” which was published in the “Federal Register” on January 2, 2009.

**B. Policy:** This change request provides instructions on the surety bond requirements found in 42 CFR §424.57(c)(26) and §424.57(d).

## II. BUSINESS REQUIREMENTS TABLE

Number	Requirement	Responsibility (place an “X” in each applicable column)									
		A / B  M A C	D M E  M A C	F I	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
6392.1	For any CMS-855S application that is: (1) subject to the bond requirement on or after May 4, 2009, and (2) submitted by a supplier described in section 21.7(A)(2)(a) of chapter 10, the National Supplier Clearinghouse (NSC) shall reject the application (as being incomplete) using existing rejection procedures.										NSC
6392.2	The NSC shall revoke the Medicare billing privileges of any enrolled supplier that is subject to the surety bond requirement and that does not furnish proof of the appropriate bond by October 2, 2009.										NSC
6392.3	If a gap in bond coverage exists, the NSC shall revoke the supplier’s billing privileges.										NSC
6392.4	The NSC shall notify DMEPOS suppliers about the surety bond requirements: (1) through listserv announcements, (2) through announcements and presentations attended by the NSC with interested organizations, and (3) by posting general information on the NSC Web site; educational material shall be developed and released no later than April 20, 2009.										NSC

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B  M A C	D M E  M A C	F I	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	

### III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B  M A C	D M E  M A C	F I	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
6392.5	A provider education article related to this instruction will be available at <a href="http://www.cms.hhs.gov/MLNMattersArticles/">http://www.cms.hhs.gov/MLNMattersArticles/</a> shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv. Contractors shall post this article, or a direct link to this article, on their Web site and include information about it in a listserv message within one week of the availability of the provider education article. In addition, the provider education article shall be included in your next regularly scheduled bulletin. Contractors are free to supplement MLN Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.		X							NSC	

### IV. SUPPORTING INFORMATION

**Section A: For any recommendations and supporting information associated with listed requirements, use the box below:**

X-Ref Requirement Number	Recommendations or other supporting information:

**Section B: For all other recommendations and supporting information, use this space:**

### V. CONTACTS

**Pre-Implementation Contact:** Frank Whelan, [frank.whelan@cms.hhs.gov](mailto:frank.whelan@cms.hhs.gov), (410) 786-1302.

**Post-Implementation Contact:** Frank Whelan, [frank.whelan@cms.hhs.gov](mailto:frank.whelan@cms.hhs.gov), (410) 786-1302.

## **VI. FUNDING**

### **Section A: For *Fiscal Intermediaries (FIs), Carriers and Regional Home Health Carriers (RHHs)*:**

Not Applicable.

### **Section B: For *Medicare Administrative Contractors (MACs)*:**

The Medicare administrative contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the contracting officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the contracting officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

# Medicare Program Integrity Manual

## Chapter 10 - Medicare Provider/Supplier Enrollment

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*(Rev. 287; 03-27-09)*

*21.7 – Surety Bonds*

## **21.7 – Surety Bonds**

**(Rev. 287; Issued: 03-27-09; Effective Date: 04-06-09; Implementation Date: 04-06-09)**

### **A. Background**

#### **1. Surety Bond**

*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 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—*
  - *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.*

*Multispecialty clinics, hospital outpatient clinics, and group practices that include non-exempt personnel and products/services are not exempt.*

*If a previously-exempted DMEPOS supplier no longer qualifies for an exception, it must submit a surety bond to the NSC in accordance with the requirements in 42 CFR §*

424.57 within 60 days after it knows or has reason to know that it no longer meets the criteria for an exception.

## **2. Effective Dates**

### *a. May 4, 2009*

*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. (NOTE: Ownership changes that do not involve a change in the status of the legal entity as evidenced by no change in the tax identification number, or changes that result in the same ownership at the level of individuals (corporate reorganizations and individuals incorporating) are not considered to be “changes of ownership” for purposes of the May 4, 2009 effective dates – meaning that such suppliers are considered “existing” suppliers as described in 2(b) below.) This policy applies to pending enrollment applications as well as applications submitted on or after May 4, 2009.*

*For any CMS-855S application: (1) submitted by a supplier described in this section (2)(a), and (2) that is pending as of May 4, 2009, the NSC shall reject the application (as being incomplete) if the supplier failed to submit a valid surety bond by May 4, 2009. For any CMS-855S application submitted on or after May 4, 2009 by a supplier described in this section (2)(a), the NSC shall reject the application if the supplier does not furnish a valid surety bond at the time it submits its application. The rejection shall be done in accordance with existing procedures (e.g., reject application after 30 days).*

### *b. October 2, 2009*

*All existing DMEPOS suppliers subject to the bonding requirement shall submit a copy of the required surety bond to the NSC no later than October 2, 2009. This can be done by furnishing: (a) the necessary bond paperwork (described in subsection (A)(4) below), (b) a signed CMS-855S certification statement, and (c) a letter that explains the submission and identifies the practice location in question. If the supplier has multiple locations, separate certification statements and separate letters must be submitted with the bond paperwork.*

## **3. Amount and Basis**

*The surety bond must be in an amount of not less than \$50,000 and is predicated on the NPI, not the tax identification number. Thus, if a supplier has two separately-enrolled DMEPOS locations, each with its own NPI, a \$50,000 bond must be obtained for each site.*

*A supplier may obtain a single bond that encompasses multiple NPIs/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. However, if the supplier elects to secure one bond that encompasses multiple locations, the bond must specify the locations it covers.*

*As stated in 42 CFR § 424.57(d)(3), a supplier will be required to maintain an 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. Thus, if a supplier has had two adverse actions imposed against it, the bond amount will be \$150,000.*

*A final adverse action is one of the following:*

- A Medicare-imposed revocation of Medicare billing privileges;*
- Suspension or revocation of a license to provide health care by any State licensing authority;*
- Revocation or suspension by an accreditation organization;*
- A conviction of a Federal or State felony offense (as defined in §424.535(a)(3)(i)) within the last 10 years preceding enrollment or re-enrollment; or*
- An exclusion or debarment from participation in a Federal or State health care program.*

*The NSC shall identify and notify DMEPOS suppliers that are subject to a higher bonding amount due to a final adverse action. The notification letter shall include: (1) the reason for the escalated bond amount and (2) the amount of the surety bond that must be secured by October 2, 2009.*

#### ***4. Bond Terms***

*The supplier is required to submit a copy of the bond that - on its face - reflects the requirements of 42 CFR § 424.57(d). 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, 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.*
- *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. The contractor may request additional supporting documentation as deemed necessary.*

*The term of the initial surety bond must be effective on the date that the application is submitted to the NSC. Moreover, the bond must be continuous.*

## **5. Sureties**

*The list of sureties from which a bond can be secured is found at Department of the Treasury's "Listing of Certified (Surety Bond) Companies;" the Web site is [www.fms.treas.gov/c570/c570\\_a-z.html](http://www.fms.treas.gov/c570/c570_a-z.html). For purposes of the surety bond requirement, these sureties are considered "authorized" sureties, and are therefore the only sureties from which the supplier may obtain a bond.*

## **6. Bond Cancellations and Gaps in Coverage**

*A DMEPOS supplier may cancel its surety bond, but must provide written notice of such to the NSC and the surety at least 30 days before the effective date of the cancellation. Cancellation of a surety bond is grounds for revocation of the supplier's Medicare billing privileges unless the supplier provides a new bond before the effective date of the cancellation. The liability of the surety continues through the termination effective date.*

*If a gap in coverage exists, the NSC shall revoke the supplier's billing privileges. If a supplier changes its surety during the term of the bond, the new surety is responsible for any overpayments, CMPs, or assessments incurred by the DMEPOS supplier beginning with the effective date of the new surety bond; the previous surety is responsible for any overpayments, CMPs, or assessments that occurred up to the date of the change of surety.*

## ***7. Reenrollment and Reactivation***

*The supplier must furnish the paperwork described in subsection (A)(4) above with any CMS-855S reenrollment or reactivation application it submits to the NSC unless it already has the information on file with the NSC. For example, if a supplier has submitted a continuous surety bond to the NSC prior to submission of its reenrollment application, a new copy of surety bond is not be required unless the NSC specifically requests it.*

### ***B. Education***

*The NSC shall conduct outreach to the DMEPOS community regarding the new surety bond requirements. The NSC shall notify DMEPOS suppliers about the requirements: (1) through listserv announcements, (2) via announcements and presentations attended by the NSC with interested organizations, and (3) by posting general information on the surety bond requirement on the NSC Web site. Educational material shall be developed and released no later than April 20, 2009.*