

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-08 Medicare Program Integrity	Centers for Medicare & Medicaid Services (CMS)
Transmittal 403	Date: January 20, 2012
	Change Request 7167

SUBJECT: Claims against Surety Bonds for Suppliers of Durable Medicare Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)

I. SUMMARY OF CHANGES: Under 42 CFR 424.57(d), DMEPOS suppliers must obtain and maintain a surety bond in an amount of at least \$50,000 in order to enroll in and to remain enrolled in the Medicare program. This change request (CR) addresses the procedures for making a claim against a surety bond consistent with 42 CFR 424.57(d)(5).

EFFECTIVE DATE: February 21, 2012

IMPLEMENTATION DATE: February 21, 2012

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-*Only One Per Row.*

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
N	15/Table of Contents
N	15/21.7.1/Claims Against Surety Bonds

III. FUNDING:

For Fiscal Intermediaries (FIs), Regional Home Health Intermediaries (RHHIs) and/or Carriers:
Not Applicable.

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.*

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I I E R	C A 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		
	CMS Pub. 100-06, chapter 4.										
7167.2	If 101 days have passed since the initial demand letter was sent and either no payment or partial payment has been received, the DME MAC shall review the "List of Bonded Suppliers" to determine whether the supplier has a surety bond.		X								
7167.2.1	If the supplier does not have a surety bond (i.e., is exempt from the surety bond requirement), the DME MAC shall continue to follow the instructions in Pub. 100-06, chapter 4, regarding collection of the overpayment.		X								
7167.2.2	If the supplier has a surety bond, the DME MAC shall notify the surety via letter that, in accordance with 42 CFR § 424.57(d)(5)(i)(A), payment of the claim must be made to CMS within 30 calendar days from the date of the letter.		X								
7167.3	The letter described in business requirement 7167.2.2 (on which the National Supplier Clearinghouse (NSC) and the supplier/debtor shall be copied) shall: (1) identify the specific amount to be paid, (2) be accompanied by "sufficient evidence" of the unpaid claim, (3) state that payment shall be made via check or money order and that the Payee shall be the DME MAC, and (4) identify the address to which payment shall be sent.		X								
7167.4	The DME MAC shall only seek repayment of the unpaid claim up to the full penal sum amount of the surety bond.		X								
7167.5	If full payment (including interest, as applicable) is made within the 30-day period described in business requirement 7167.2.2, the DME MAC shall - no later than 15 calendar days after confirming that payment was made - undertake the activities described in business requirements 7167.5.1 and 5.2.		X								
7167.5.1	The DME MAC shall update all applicable records to reflect that payment was made.		X								
7167.5.2	The DME MAC shall notify the supplier via letter (on which the NSC shall be copied) that payment has been made and that the supplier must, within 30 calendar days of the date of the letter, obtain and submit to the NSC additional surety bond coverage so as to ensure that the amount equals or exceeds \$50,000 (or higher if		X								

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I I E R	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
7167.9	with existing procedures. If, in response to the letter identified in business requirement 7167.7, full payment/interest is not made within the applicable timeframe, the DME MAC shall notify the applicable RO of this via letter or e-mail and await further direction.		X								

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 I E R	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
7167.10	A provider education article related to this instruction will be available at http://www.cms.hhs.gov/MLNMattersArticles/ 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								

IV. SUPPORTING INFORMATION

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

Use "Should" to denote a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:
	None

Section B: For all other recommendations and supporting information, use this space: N/A

V. CONTACTS

Pre-Implementation Contact:

Frank Whelan, frank.whelan@cms.hhs.gov, (410) 786-1302.

Post-Implementation Contact:

Contact your Contracting Officer's Technical Representative (COTR) or Contractor Manager, as applicable.

VI. FUNDING

Section A: For *Fiscal Intermediaries (FIs)*, *Regional Home Health Intermediaries (RHHIs)*, and/or *Carriers*:

Not applicable.

Section B: For *Medicare Administrative Contractors (MACs)*, include the following statement:

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 15 - Medicare Enrollment

Table of Contents
(Rev.403, Issued: 01-20-12)

15.21.7.1 – Claims against Surety Bonds

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(Rev.403, Issued: 01-20-12, Effective: 02-21-12, Implementation: 02-21-12)

Pursuant to 42 CFR § 424.57(d)(5)(i), the surety must pay CMS - within 30 days of receiving written notice to do so - the following amounts up to the full penal sum of the bond:

(1) The amount of any unpaid claim, plus accrued interest, for which the supplier of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) is responsible.

(2) The amount of any unpaid claim, civil monetary penalty (CMP) or assessment imposed by CMS or the Office of Inspector General (OIG) on the DMEPOS supplier, plus accrued interest.

This section 15.21.7.1 describes the procedures involved in making a claim against a surety bond.

A. Unpaid Claims

1. Background

For purposes of the surety bond requirement, 42 CFR § 424.57(a) defines an “unpaid claim” 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. Thus, the policies in this section 15.21.7.1(A) only apply to overpayment determinations that relate to payments made on or after March 3, 2009.

2. Collection

If the Durable Medical Equipment Medicare Administrative Contractor (DME MAC) determines – in accordance with CMS’s existing procedures for making overpayment determinations - that (1) the DMEPOS supplier has an unpaid claim for which it is liable, and (2) no waiver of recovery under the provisions of Section 1870 of the Social Security Act is warranted, the DME MAC shall attempt to recover the overpayment in accordance with the instructions in CMS Pub. 100-06, chapter 4.

If 101 days have passed since the initial demand letter was sent to the DMEPOS supplier and full or partial payment has not been received, the DME MAC shall attempt to recover the overpayment via the surety bond collection process. The DME MAC shall review the “List of Bonded Suppliers” the last week of each month to determine which suppliers that are at least 101 days delinquent have a surety bond. Said List:

- *Will be electronically sent to the DME MACs by the Provider Enrollment Operations Group on a monthly basis.*

- *Will be in the form of an Excel spreadsheet.*
- *Will contain the supplier's legal business name, tax identification number, National Provider Identifier, surety bond amount and other pertinent information.*

If the supplier does not have a surety bond (i.e., is exempt from the surety bond requirement), the DME MAC shall continue to follow the instructions in Pub. 100-06, chapter 4, regarding collection of the overpayment.

If, however, the supplier has a surety bond, the DME MAC shall notify the surety via letter that in accordance with 42 CFR § 424.57(d)(5)(i)(A), payment of the claim must be made to CMS within 30 calendar days from the date of the letter. The letter (on which the National Supplier Clearinghouse (NSC) and the supplier/debtor shall be copied) shall:

- *Identify the specific amount to be paid and be accompanied by "sufficient evidence" of the unpaid claim. "Sufficient evidence" is defined in 42 CFR § 424.57(a) as documents that CMS may supply to the DMEPOS supplier's surety to establish that the supplier had received Medicare funds in excess of the amount due and payable under the statute and regulations. The specific types of documents to be supplied can include Medicare overpayment determination letters and may vary according to the supplier's particular circumstances; the DME MAC therefore has significant discretion in determining what constitutes "sufficient evidence." Under no circumstances, however, shall said evidence include any personally identifiable information that is protected under the Privacy Act.*
- *State that payment shall be made via check or money order and that the Payee shall be the DME MAC.*
- *Identify the address to which payment shall be sent.*

The DME MAC shall only seek repayment up to the full penal sum amount of the surety bond. Thus, if the supplier has a \$60,000 unpaid claim and the amount of the supplier's bond coverage is \$50,000, the DME MAC shall only seek the \$50,000 amount. The remaining \$10,000 will have to be obtained from the supplier via the existing overpayment collection process.

3. Verification of Payment

If full payment (including interest, as applicable) is made within the aforementioned 30-day period, the DME MAC shall, no later than 15 calendar days after payment was made:

- *Update all applicable records to reflect that payment was made. (Payment from the surety shall be treated as payment from the supplier for purposes of said record updates.)*
- *Notify the supplier via letter (on which the NSC shall be copied) that payment has been made and that the supplier must, within 30 calendar days of the date of the letter, obtain and submit to the NSC additional bond coverage so as to ensure that the amount equals*

or exceeds \$50,000 (or higher if an elevated bond amount is involved due to a final adverse action). Thus, if the surety made payment on a \$10,000 claim, the supplier must obtain \$10,000 worth of additional surety bond coverage by either: (1) adding to the amount of the existing surety bond, or (2) cancelling its current surety bond and securing a new \$50,000 surety bond. (Obtaining a separate \$10,000 surety bond is impermissible.)

If the NSC does not receive the additional bond coverage within this 30-day period, it shall revoke the supplier's Medicare billing privileges in accordance with existing procedures.

If full payment is not made within the aforementioned 30-day timeframe, the DME MAC shall refer the debt to the Department of Treasury.

If the supplier successfully appeals the overpayment and the surety has already made payment to the DME MAC on the overpayment, the DME MAC shall – within 30 calendar days of receiving notice of the successful appeal - notify the surety via letter of the successful appeal and repay the surety via check or money order.

B. Assessments and CMPs

1. Background

Per 42 CFR § 424.57(a), an assessment is defined as a “sum certain that CMS or the OIG may assess against a DMEPOS supplier under Titles XI, XVIII, or XXI of the Social Security Act.” Under 42 CFR § 424.57(a), a CMP is defined as a sum that CMS has the authority, as implemented by 42 CFR 402.1(c) (or the OIG has the authority, under section 1128A of the Act or 42 CFR Part 1003) to impose on a supplier as a penalty.

CMS will notify the DME MAC of the need for the latter to collect payment from the surety on an assessment or CMP imposed against a particular bonded DMEPOS supplier. Upon receipt of this notification, the DME MAC shall notify the surety via letter that, in accordance with 42 CFR § 424.57(d)(5)(i)(B), payment of the assessment or CMP must be made within 30 calendar days from the date of the letter. The letter (on which the NSC and the supplier/debtor shall be copied) shall:

- Identify the specific amount to be paid and be accompanied by “sufficient evidence” (e.g., an OIG or CMS demand letter).*
- State that payment shall be made via check or money order and that the Payee shall be CMS.*
- Identify the address to which payment shall be sent.*

2. Verification of Payment

If full payment (including interest, as applicable) is made within the aforementioned 30-day period, the DME MAC shall, no later than 15 calendar days after payment was made:

- Update all applicable records to reflect that payment was made. (Payment from the surety shall be treated as payment from the supplier for purposes of said record updates.)*
- Notify the applicable CMS Regional Office (RO) via letter or e-mail that payment was made.*
- If the OIG imposed the CMP or assessment, notify the OIG via letter that payment was made.*
- Notify the supplier via letter (on which the NSC shall be copied) that payment has been made and that the supplier must, within 30 calendar days of the date of the letter, obtain and submit to the NSC additional bond coverage so as to ensure that the amount equals or exceeds \$50,000 (or higher if an elevated bond amount is involved due to a final adverse action). Thus, if the surety made payment on a \$10,000 CMP, the supplier must obtain \$10,000 worth of additional surety bond coverage by either: (1) adding to the amount of the existing surety bond, or (2) cancelling its current surety bond and securing a new \$50,000 surety bond. (Obtaining a separate \$10,000 surety bond is impermissible.)*

If the NSC does not receive the additional bond coverage within this 30-day period, it shall revoke the DMEPOS supplier's Medicare billing privileges in accordance with existing procedures.

If full payment is not made within the aforementioned 30-day timeframe, the DME MAC shall notify the applicable RO via letter or e-mail and await further direction.

If the DMEPOS supplier successfully appeals the CMP or assessment and the surety has already made payment, CMS will – within 30 days of receiving notice of the successful appeal - notify the surety via letter of the successful appeal and repay the surety.