

<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 681</b>	<b>Date: October 27, 2016</b>
	<b>Change Request 9755</b>

**SUBJECT: Revision to Surety Bond Collection Procedures**

**I. SUMMARY OF CHANGES:** The purpose of this change request (CR) is to revise Pub. 100-08, chapter 15, section 15.21.7.1 to clarify certain aspects of the surety bond collection process involving suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS).

**EFFECTIVE DATE: January 30, 2017**

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

**IMPLEMENTATION DATE: January 30, 2017**

*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.

<b>R/N/D</b>	<b>CHAPTER / SECTION / SUBSECTION / TITLE</b>
R	15/TOC
R	15/15.21.7.1/Claims Against Surety Bonds
R	15/15.21.7.1.1/Model Letters for Claims Against Surety Bonds

**III. FUNDING:**

**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**

# Attachment - Business Requirements

Pub. 100-08	Transmittal: 681	Date: October 27, 2016	Change Request: 9755
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**SUBJECT: Revision to Surety Bond Collection Procedures**

**EFFECTIVE DATE: January 30, 2017**

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

**IMPLEMENTATION DATE: January 30, 2017**

## I. GENERAL INFORMATION

**A. Background:** This CR revises Pub. 100-08, chapter 15, section 15.21.7.1 to clarify certain aspects of the surety bond collection process involving DMEPOS suppliers. Issues addressed in the CR include--(1) Clarification of the term "overpayment determination" for purposes of surety bond collection; (2) Notifying suppliers of the need to obtain additional surety bond coverage (if applicable); and (3) The reporting of historical surety bond collection amounts.

**B. Policy:** This CR does not involve any legislative or regulatory policies.

## II. BUSINESS REQUIREMENTS TABLE

*"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.*

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
9755.1	If full or partial payment is made within 30 calendar days of the date of the letter to the surety, the contractor shall, no later than 10 calendar days after payment was made, send a mailed, faxed, or (preferably) e-mailed letter to the supplier (on which the National Supplier Clearinghouse (NSC) shall be copied) stating that payment has been made and the amount of said payment, and containing the applicable quoted verbiage in section 15.21.7.1(A) or (B).				X					
9755.1.1	The NSC shall--(1) Monitor the supplier's surety bond status upon receiving a copy of the Durable Medical Equipment Medicare Administrative Contractor's (DME MAC) letter to the supplier; and (2) Take prompt action against the supplier (consistent with									NSC

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
	existing procedures) if the supplier does not secure and timely submit the required additional surety bond coverage.									
9755.2	As referenced in section 15.21.7.1(C), the DME MAC shall include the following data in its quarterly reports to the Provider Enrollment & Oversight Group--(1) Amounts recovered directly from sureties since March 3, 2009; (2) Amounts paid by suppliers since March 3, 2009 after the debt was referred to the surety for collection; and (3) Names of suppliers on whose surety bond(s) the surety made payment in the last quarter and to whom the DME MAC consequently sent notice to the supplier that it must obtain additional surety bond coverage to reach the \$50,000 threshold.				X					

### III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility					
		A/B MAC			D M E M A C	D E D I	C E D I
		A	B	H H H			
	None						

### IV. SUPPORTING INFORMATION

**Section A: Recommendations and supporting information associated with listed requirements: N/A**

*"Should" denotes a recommendation.*

X-Ref Requirement Number	Recommendations or other supporting information:

**Section B: All other recommendations and supporting information: N/A**

## **V. CONTACTS**

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

**Post-Implementation Contact(s):** Contact your Contracting Officer's Representative (COR).

## **VI. FUNDING**

### **Section A: 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.

**ATTACHMENTS: 0**

# Medicare Program Integrity Manual

## Chapter 15 - Medicare Enrollment

### Table of Contents

*(Rev. 681, Issued: 10-27-16,)*

15.21.7.1.1 – Model Letters for Claims *A*gainst Surety Bonds

## 15.21.7.1 – Claims against Surety Bonds

*(Rev.681, Issued: 10-27-16 Effective: 01-30-17, Implementation: 01-30-17)*

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.

*The policies in this section 15.21.7.1(A) only apply to overpayment determinations relating to services performed on or after March 3, 2009. A surety is liable for any overpayments based on dates of service occurring during the term of the surety bond. (For purposes of determining surety liability, the date of service is the date on which the service was performed/furnished.) Even if the overpayment determination is made after the expiration of the surety bond, the surety remains liable if the date of service was within the surety bond coverage period. In short, the date of service--rather than the date of the overpayment determination or the date the overpayment or demand letter was sent to the supplier---is the principal factor in ascertaining surety liability.*

*As an illustration, assume that a supplier has a surety bond with Company X on August 1, 2015. It performs a service on October 1, 2015. The supplier ends its coverage with Company X effective January 1, 2016 and obtains a new surety bond with Company Y effective that same date. On February 1, 2016, CMS determines that the October 1, 2015 service resulted in an overpayment; on March 2, 2016, CMS sends an overpayment demand letter to the supplier. While the overpayment determination and the sending of the demand letter occurred during Company Y's coverage period, the date of service was within the Company X coverage period. Thus, liability (and responsibility for payment) rests with Company X, even though the supplier no longer has a surety bond with X.*

#### 2. Collection

##### a. Delinquency Period

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 80 days have passed since the initial demand letter was sent to the DMEPOS supplier and full payment has not been received, the DME MAC shall attempt to recover the overpayment. The DME MAC shall review the “List of Bonded Suppliers” the last week of each month to determine which suppliers that have exceeded this 80-day period have a surety bond. Said list:

- Will be electronically sent to the DME MACs by the Provider Enrollment & Oversight 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, *NPI*, 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.

b. Request for Payment from Surety

If, however, the supplier has a surety bond (and subject to situations (1) through (6) below), the DME MAC shall send an "Intent to Refer" (ITR) letter to the supplier and a copy thereof to the supplier's surety. The letter and copy shall be sent (a) on the same date and (b) between 80 and 90 days after the initial demand letter was sent. (The copy to the surety can be sent via mail, e-mail, or fax.)

(NOTE: Under federal law, a delinquent debt must be referred to the Department of Treasury within 120 days. (Per the chart below, this represents Day 150 of the entire collection cycle.) To ensure that the DME MAC meets this 120-day limit yet has sufficient time to prepare the surety letter as described in the following paragraph, it is recommended that the DME MAC send the ITR letter several days prior to the 90-day limit referenced in the previous paragraph. This will give the DME MAC a few additional days beyond the 30-day deadline referenced in the next paragraph to send the surety letter.)

If the DME MAC does not receive full payment from the supplier within 30 days of sending the ITR letter (and subject to situations (1) through (6) below), the contractor shall notify the surety via letter that in accordance with 42 CFR § 424.57(d)(5)(i)(A), the surety must make payment of the claim to CMS within 30 days from the date of the surety letter. (The DME MAC shall send a copy of the surety letter to the supplier on the same date.) The DME MAC shall send the surety letter no later than 30 days after sending the ITR letter (subject to the previous paragraph), depending on the facts of the case. Consider the following situations:

- (1) If a DMEPOS supplier has withdrawn from Medicare or has had its *enrollment* deactivated or revoked, the contractor shall send the ITR and the surety letter on the earliest possible days.
- (2) If the supplier has an extended repayment schedule (ERS) and is currently making payments, the DME MAC shall not send an ITR letter or a surety letter. If the DME MAC is currently reviewing an ERS application from the supplier, the contractor shall delay sending the ITR letter and the surety letter until after the ERS review is complete.
- (3) If the aggregated principal balance of the debt is less than \$25, the DME MAC shall not send an ITR letter or a surety letter. It shall instead follow the instructions in CMS Pub. 100-06, chapter 4 regarding collection of the overpayment.
- (4) If the DME MAC believes the debt will be collected through recoupment, it shall not send an ITR letter or a surety letter. It shall instead follow the instructions in Pub. 100-06, chapter 4 regarding collection of the overpayment.
- (5) If the supplier has had a recent offset, the DME MAC may wait to see if future offsets will close the debt, without sending the surety a letter. If the debt is still not paid in full or an ERS has not been established, the DME MAC shall send the surety letter no later than the 115<sup>th</sup> day after the initial demand letter was sent.

- (6) A payment demand letter shall not be sent to the surety if the DME MAC is certain that the \$50,000 surety bond amount in question has been completely exhausted.

The DME MAC may choose to aggregate debts from the same supplier into one surety letter, provided they are at least 30 days delinquent.

The surety letter shall:

- Follow the format of the applicable model letter in section 15.21.7.1.1 of this chapter.
- 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.
- Be accompanied by the following documents, which constitute “sufficient evidence” for purposes of § 424.57(a):

(1) A computer-generated “Overpayment Services Report” containing the following information:

- (i) Date of service (*i.e., the date the service was furnished/performed, not the date of the overpayment determination or the date of the overpayment or demand letter*)
- (ii) Date on which supplier was paid
- (iii) Code for type of service
- (iv) Billed Amount
- (v) Allowed Amount
- (vi) Deductible Amount
- (vii) Co-Insurance Amount
- (viii) Paid Amount
- (ix) Overpayment Amount

(NOTE: The report shall not include beneficiary name, HICN, or any information otherwise protected under the Privacy Act.)

(2) A copy of the overpayment determination letter that was sent to the supplier.

- 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.

#### c. Follow-Up Contact

Between 8 and 12 calendar days after sending the surety letter, the DME MAC shall contact the surety by telephone or e-mail to determine whether the surety received the letter and, if it did, whether and when payment will be forthcoming.

If the surety indicates that it did not receive the letter, the DME MAC shall immediately fax or e-mail a copy of the letter to the surety. The surety will have 30 days from the original date of the letter – not 30 days from the date the letter was resent to the surety – to submit payment. To illustrate, suppose the DME MAC

on April 1 sends the surety letter, which is also dated April 1. It places the follow-up call to the surety on April 11. The surety states that it never received the letter, so the contractor e-mails a copy of it to the surety that same day. Payment must be received by May 1, or 30 days from the original date of the letter.

If the surety cannot be reached (including situations where a voicemail message must be left) or if the surety indicates that it did receive the letter and that payment is forthcoming, no further action by the contractor is required. If the surety indicates that payment is not forthcoming, the contractor shall (1) attempt to ascertain the reason, and (2) follow the steps outlined in section (A)(3)(b) below after the 30-day period expires.

The contractor shall document any attempts to contact the surety by telephone and the content of any resultant conversations with the surety.

### 3. Verification of Payment

#### a. Full Payment *of the Claim* Is Made

If full payment (including interest, as applicable) is made within the aforementioned 30-day period, the DME MAC shall, no later than **10** calendar days after payment was made:

- (i) 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.)
- (ii) *Send a mailed, faxed, or (preferably) e-mailed letter* to the supplier (on which the NSC shall be copied):
  - *Stating that payment has been made, the date the payment was received, and the amount of the payment*
  - *Containing the following quoted verbiage:*

*“You must, within 30 calendar days of the date of this letter, obtain and submit to the NSC additional surety bond coverage in the amount of (insert the amount that the surety paid) so as to ensure that your total coverage equals or exceeds the required \$50,000 amount” (or higher if an elevated bond amount is involved due to a final adverse action). **“Failure to timely do so will result in the revocation of your Medicare enrollment.”***

*“Additional surety bond coverage may be obtained by (1) adding to the amount of your existing surety bond so as to equal or exceed \$50,000, or (2) cancelling your current surety bond and securing a new \$50,000 surety bond. (Obtaining a separate (insert the amount the surety paid) surety bond is impermissible.) In either case, the effective date of the additional coverage must be on or before the date that you submit the additional coverage to the NSC.*

If the NSC does not receive the additional bond coverage within this 30-day period, it shall revoke the DMEPOS supplier’s Medicare *enrollment under § 424.535(a)(1)* in accordance with existing procedures. *(The effective date of revocation shall be the date on which the DME MAC received payment from the surety.) It is important that the NSC (1) monitor the supplier’s surety bond status upon receiving a copy of the DME MAC’s letter to the supplier and (2) take prompt action against the supplier (consistent with existing procedures) if the supplier does not secure and timely submit the required additional coverage.*

#### b. *No Payment of the Claim* Is Made

If the surety fails to make *any* payment within 30 calendar days of the date of the letter to the surety, the DME MAC shall:

(i) Refer the debt to the Department of Treasury immediately upon the expiration of said 30-day timeframe (i.e., preferably on the same day or the day after, but in all cases no later than the 120-day deadline for sending delinquent debts to the Department of Treasury) and as outlined in Pub. 100-06, chapter 4;

(ii) No later than 14 days after the 30-day period expires, contact the surety via e-mail or telephone to ascertain the reason for non-payment. Only one contact is necessary. A voice mail message may be left. The contractor shall document any attempts to contact the surety by telephone and the content of any resultant conversations with the surety.

(iii) No later than 14 days after Step (ii) has been completed – and if full payment still has not been received -- send the letter identified in section 15.21.7.1.1(E) to the surety.

(iv) Include information relating to the surety's non-payment in the report identified in section 15.21.7.1(C).

c. *Partial Payment of the Claim Is Made*

*If the surety pays part of the claim within the 30-day period and a balance is still due and owing, the DME MAC shall do the following:*

*(i) Refer the unpaid debt to the Department of Treasury immediately upon the expiration of said 30-day timeframe (i.e., preferably on the same day or the day after, but in all cases no later than the 120-day deadline for sending delinquent debts to the Department of Treasury) and as outlined in Pub. 100-06, chapter 4;*

*(ii) No later than 14 days after the 30-day period expires, contact the surety via e-mail or telephone to ascertain the reason for the partial non-payment. Only one contact is necessary. A voice mail message may be left. The contractor shall document any attempts to contact the surety by telephone and the content of any resultant conversations with the surety.*

*(iii) No later than 14 days after Step (ii) has been completed – and if full payment still has not been received -- send the letter identified in section 15.21.7.1.1(E) to the surety.*

*(iv) Include information relating to the surety's partial non-payment in the report identified in section 15.21.7.1(C).*

*(v) No later than 10 calendar days after the partial payment was made:*

- *Update all applicable records to reflect that partial payment was made. (Payment from the surety shall be treated as payment from the supplier for purposes of said record updates.)*
- *Send a mailed, faxed, or (preferably) e-mailed letter to the supplier (on which the NSC shall be copied):*
  - *Stating that partial payment was made, the date the payment was received, and the amount of said payment*
  - *Containing the following quoted verbiage:*

*“You must, within 30 calendar days of the date of this letter, obtain and submit to the NSC additional surety bond coverage in the amount of (insert the amount that the surety paid) so as to ensure that your total coverage equals or exceeds the required \$50,000 amount” (or*

*higher if an elevated bond amount is involved due to a final adverse action). **“Failure to timely do so will result in the revocation of your Medicare enrollment.”***

*“Additional surety bond coverage may be obtained by (1) adding to the amount of your existing surety bond so as to equal or exceed \$50,000, or (2) cancelling your current surety bond and securing a new \$50,000 surety bond. (Obtaining a separate (insert the amount the surety paid) surety bond is impermissible.) In either case, the effective date of the additional coverage must be on or before the date that you submit the additional coverage to the NSC.”*

*If the NSC does not receive the additional bond coverage within this 30-day period, it shall revoke the DMEPOS supplier’s Medicare enrollment under § 424.535(a)(1) in accordance with existing procedures. (The effective date of revocation shall be the date on which the DME MAC received payment from the surety.) It is important that the NSC (1) monitor the supplier’s surety bond status upon receiving a copy of the DME MAC’s letter to the supplier and (2) take prompt action against the supplier (consistent with existing procedures) if the supplier does not secure and timely submit the required additional coverage.*

#### **d. Successful Appeal**

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.

#### **4. Summary**

The following chart outlines the timeframes involved in the surety bond collection process for overpayments:

Day 1	Initial Demand Letter Sent
Day 31	Debt is Delinquent/Interest Starts
Day 41	Recoupment Starts
Day 90	Intent to Refer Letter Sent
Day 120	Surety Bond Letter Sent
Day 150	Referral to Treasury

### **B. Assessments and CMPs**

#### **1. Request for Payment from Surety**

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 – regardless of the amount of the assessment or CMP - 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:

- Follow the format of the applicable model letter in section 15.21.7.1.1 of this chapter.
- Identify the specific amount to be paid and be accompanied by “sufficient evidence.” This includes all documentation that CMS (in its notification to the DME MAC as described above) requests the DME MAC to include with the letter (e.g., OIG 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. Follow-Up Contact

Between 8 and 12 calendar days after sending the surety letter, the DME MAC shall contact the surety by telephone or e-mail to determine whether the surety received the letter and, if it did, whether and when payment is forthcoming;

If the surety indicates that it did not receive the letter, the DME MAC shall immediately fax or e-mail a copy of the letter to the surety. The surety will have 30 days from the original date of the letter – not 30 days from the date the letter was resent to the surety – to submit payment. To illustrate, suppose the DME MAC on April 1 sends the surety letter, which is also dated April 1. It places the follow-up call to the surety on April 11. The surety states that it never received the letter, so the contractor e-mails a copy of it to the surety that same day. Payment must be received by May 1, or 30 days from the original date of the letter.

If the surety cannot be reached (including situations where a voicemail message must be left) or if the surety indicates that it received the letter and that payment is forthcoming, no further action by the contractor is required. If the surety indicates that payment is not forthcoming, the contractor shall (1) attempt to ascertain the reason, and (2) follow the steps outlined in section (A)(3)(b) below after the 30-day period expires.

The contractor shall document any attempts to contact the surety by telephone and the content of any resultant conversations with the surety.

## 3. Verification of Payment

### a. Full Payment Is Made

If full payment (including interest, as applicable) is made within 30 calendar days of the date of the letter to the surety, the DME MAC shall, no later than **10** calendar days after payment was made:

- (i) 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.)
- (ii) Notify the applicable CMS Regional Office (RO) via letter or e-mail that payment was made.
- (iii) If the OIG imposed the CMP or assessment, notify the OIG via letter that payment was made.
- (iv) *Send a mailed, faxed, or (preferably) e-mailed letter to the supplier (on which the NSC shall be copied):*

- *Stating that payment has been made, the date the payment was received, and the amount of said payment*

- *Containing the following quoted verbiage:*

*“You must, within 30 calendar days of the date of this letter, obtain and submit to the NSC additional surety bond coverage in the amount of (insert the amount that the surety paid) so as to*

*ensure that your total coverage equals or exceeds the required \$50,000 amount” (or higher if an elevated bond amount is involved due to a final adverse action). **“Failure to timely do so will result in the revocation of your Medicare enrollment.”***

*“Additional surety bond coverage may be obtained by (1) adding to the amount of your existing surety bond so as to equal or exceed \$50,000, or (2) cancelling your current surety bond and securing a new \$50,000 surety bond. (Obtaining a separate (insert the amount the surety paid) surety bond is impermissible.) In either case, the effective date of the additional coverage must be on or before the date that you submit the additional coverage to the NSC.”*

If the NSC does not receive the additional bond coverage within this 30-day period, it shall revoke the DMEPOS supplier’s Medicare *enrollment under § 424.535(a)(1) enrollment* in accordance with existing procedures. *(The effective date of revocation shall be the date on which the DME MAC received payment from the surety.) It is important that the NSC (1) monitor the supplier’s surety bond status upon receiving a copy of the DME MAC’s letter to the supplier and (2) take prompt action against the supplier (consistent with existing procedures) if the supplier does not secure and timely submit the required additional coverage.*

**b. *No Payment Is Made***

If the surety fails to make *any* payment within the aforementioned 30-day timeframe, the DME MAC shall:

- (i) Continue collection efforts as outlined in Pub. 100-06, chapter 4;*
- (ii) No later than 14 days after the 30-day period expires, contact the surety via e-mail or telephone to ascertain the reason for non-payment. Only one contact is necessary. A voice mail message may be left. The contractor shall document any attempts to contact the surety by telephone and the content of any resultant conversations with the surety.*
- (iii) No later than 14 days after Step 2 has been completed – and if full payment still has not been received -- send the letter identified in section 15.21.7.1.1(E) to the surety.*
- (iv) Include information relating to the surety’s non-payment in the report outlined in section 15.21.7.1(C).*

**c. *Partial Payment of the Claim Is Made***

*If the surety pays part of the claim within the 30-day period and a balance is still due and owing, the DME MAC shall do the following:*

- (i) Continue collection efforts as outlined in Pub. 100-06, chapter 4;*
- (ii) No later than 14 days after the 30-day period expires, contact the surety via e-mail or telephone to ascertain the reason for the partial non-payment. Only one contact is necessary. A voice mail message may be left. The contractor shall document any attempts to contact the surety by telephone and the content of any resultant conversations with the surety.*
- (iii) No later than 14 days after Step (ii) has been completed – and if full payment still has not been received -- send the letter identified in section 15.21.7.1.1(E) to the surety.*
- (iv) Include information relating to the surety’s partial non-payment in the report identified in section 15.21.7.1(C).*

*(v) No later than 10 calendar days after the partial payment was made:*

- *Update all applicable records to reflect that partial payment was made. (Payment from the surety shall be treated as payment from the supplier for purposes of said record updates.)*
- *Send a mailed, faxed, or (preferably) e-mailed letter to the supplier (on which the NSC shall be copied):*
  - *Stating that partial payment was made, the date the payment was received, and the amount of said payment*
  - *Containing the following quoted verbiage:*

*“You must, within 30 calendar days of the date of this letter, obtain and submit to the NSC additional surety bond coverage in the amount of (insert the amount that the surety paid) so as to ensure that your total coverage equals or exceeds the required \$50,000 amount” (or higher if an elevated bond amount is involved due to a final adverse action). **“Failure to timely do so will result in the revocation of your Medicare enrollment.”***

*“Additional surety bond coverage may be obtained by (1) adding to the amount of your existing surety bond so as to equal or exceed \$50,000, or (2) cancelling your current surety bond and securing a new \$50,000 surety bond. (Obtaining a separate (insert the amount the surety paid) surety bond is impermissible.) In either case, the effective date of the additional coverage must be on or before the date that you submit the additional coverage to the NSC.”*

*If the NSC does not receive the additional bond coverage within this 30-day period, it shall revoke the DMEPOS supplier’s Medicare enrollment under § 424.535(a)(1) in accordance with existing procedures. (The effective date of revocation shall be the date on which the DME MAC received payment from the surety.) It is important that the NSC (1) monitor the supplier’s surety bond status upon receiving a copy of the DME MAC’s letter to the supplier and (2) take prompt action against the supplier (consistent with existing procedures) if the supplier does not secure and timely submit the required additional coverage.*

#### **d. Successful Appeal**

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.

### **C. Reporting Requirements**

DME MACs shall compile a report on a quarterly basis in the format prescribed in existing CMS directives. The report will capture the following elements:

- Number of account receivables (debts) reviewed for possible surety bond letter development
- Number of debts sent to the surety for recovery
- Amounts *recovered directly from sureties (1) during the quarter in question, and (2) since March 3, 2009 (that is, the total/cumulative amount collected since the beginning of the surety bond collection process)*
- Amounts *paid by suppliers after the debt was referred to the surety for collection. The report shall include the (1) amount for the quarter in question and (2) total/cumulative amount since March 3, 2009.*
- Names of suppliers and NSC numbers for which letters were sent to the surety and/or surety bond recoveries were received

- *Names of suppliers on whose surety bond(s) the surety made payment in the last quarter and to whom the DME MAC consequently sent notice to the supplier that it must obtain additional surety bond coverage to reach the \$50,000 threshold.*
- Names and addresses of sureties that have failed to make payment within the quarterly period. For each instance of non-payment, the report shall identify (a) the amount that was requested, (b) the amount that was paid (if any), (3) the name and tax identification number of the supplier in question, and (4) the reason the surety did not pay (to the extent this can be determined).

The quarterly reports shall encompass the following time periods: January through March, April through June, July through August, and September through December. Reports shall be submitted to the Provider Enrollment & Oversight Group (*with a copy to the MAC COR*) --- *via the following e-mail address: [XXXXXXXX@cms.hhs.gov](mailto:XXXXXXXX@cms.hhs.gov)* --- by the 10<sup>th</sup> day of the month following the end of the reporting quarter. Information on surety collections shall be reported once for each demand letter. That action shall be reported only when the collection process has been fully completed for that specific identified overpayment, which may be comprised of multiple claims. For example, suppose the surety was sent a letter in December but its payment was not received until January. That action would be documented in the report encompassing the months of January, February, and March.

### **15.21.7.1.1 – Model Letters for Claims *Against Surety Bonds***

*(Rev.681, Issued: 10-27-16 Effective: 01-30-17, Implementation: 01-30-17)*

When making a claim against a surety bond in accordance with section 15.21.7.1 of this chapter, the contractor shall use the applicable model letter below:

#### **A. Letter for Overpayments – Supplier is Still Enrolled in Medicare**

Date

Surety Name

Surety Address

RE: Supplier Legal Business Name  
Supplier DBA Name (if any)  
Supplier Address  
Supplier National Provider Identifier (NPI)

Dear Surety:

(Supplier legal business name) is currently enrolled in the Medicare program as a supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). As a condition of its Medicare enrollment, (Supplier) is required – under Federal regulations at 42 C.F.R. §424.57(d) - to maintain a surety bond in an amount of no less than \$50,000. In accordance with this provision, (Supplier) has a \$\_\_\_\_\_ surety bond with your company.

Consistent with 42 C.F.R. §424.57(d)(5)(i)(A), the surety must pay CMS - upon receiving written notice from CMS containing “sufficient evidence” as defined in the Program Integrity Manual, CMS Pub. 100-08, § 15.21.7.1.A.2.(c) - the amount of any unpaid claim for which the DMEPOS supplier is responsible, up to the full penal amount of the bond. An “unpaid claim” is defined in 42 C.F.R. §424.57(a) as an overpayment made by the Medicare program to the DMEPOS supplier for which the DMEPOS supplier is responsible.

CMS has determined that (Supplier) has incurred an overpayment in the amount of (insert dollar amount) for (*insert “a service” or “services”, as applicable*) performed on (*insert date(s) of service*). This determination was made based on specific information about the overpayment, which is included in the attachments to this letter.

CMS has been unable to recover the full overpayment from (Supplier) using its existing recoupment procedures. (Supplier) has repaid (insert “none” or “only \$\_\_\_\_\_”) of the overpayment amount. Consistent with 42 C.F.R. §424.57(d)(5)(i)(A), therefore, CMS requests that (Surety) make payment to CMS in the amount of (insert applicable amount) no later than 30 days from the date of this letter. Payment shall be made via check or money order and sent to the following address:

Contractor Name  
Address  
City, State and Postal ZIP Code

The payee shall be (insert DME MAC), which is CMS’s Durable Medical Equipment Medicare Administrative Contractor for (Supplier)’s location.

Failure to make the requested payment in a timely manner may result in referrals to the United States Department of Justice for collection action, and/or the United States Department of the Treasury for revocation of [surety name’s] authority to provide federal bonds.

Should you have any questions about this letter, please do not hesitate to contact \_\_\_\_\_ at \_\_\_\_\_.  
(The contractor shall identify a specific individual who the surety can contact if questions arise.)

Sincerely,  
(Name and title)

cc: Supplier Name

**B. Letter for Overpayments - Supplier is No Longer Enrolled in Medicare**

Date

Surety Name  
Surety Address

RE: Former Supplier Legal Business Name  
Former Supplier DBA Name (if any)  
Former Supplier Address  
Former Supplier NPI

Dear Surety:

(Former Supplier legal business name) was enrolled in the Medicare program as a supplier of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) until (insert effective date of termination/revocation). As a condition of its Medicare enrollment, (Former Supplier) was required – under Federal regulations at 42 C.F.R. §424.57(d) - to maintain a surety bond in an amount of no less than \$50,000. In accordance with this provision, (Former Supplier) obtained a \$\_\_\_\_\_ surety bond with your company.

Consistent with 42 C.F.R. §424.57(d)(5)(i)(A), the surety must pay CMS – upon receiving written notice from CMS containing sufficient evidence to establish the surety’s liability under the bond – the amount of any unpaid claim for which the DMEPOS supplier is responsible, up to the full penal amount of the bond.

An “unpaid claim” is defined in 42 C.F.R. §424.57(a) as an overpayment made by the Medicare program to the DMEPOS supplier for which the DMEPOS supplier is responsible.

CMS has determined that (Supplier) incurred an overpayment in the amount of (insert dollar amount) for *(insert “a service” or “services”, as applicable)* performed on *(insert date(s) of service)*. This determination was made based on specific information about the overpayment, which is included in the attachments to this letter.

CMS has been unable to recover the full overpayment from (Former Supplier) using its existing recoupment procedures. (Former Supplier) has repaid (insert “none” or “only \$\_\_\_\_\_”) of the overpayment amount.

(Former Supplier’s) surety bond coverage with your company ended on (insert date). However, consistent with 42 C.F.R. §424.57(d)(5)(iii), the surety is liable for unpaid claims that:

- (1) CMS assessed against the supplier based on overpayments that took place during the term of the bond or rider, and
- (2) Were assessed by CMS during the 2 years following the date that the supplier failed to submit a bond or required rider or the date that the supplier’s Medicare enrollment was terminated, whichever is later.

The overpayment occurred on (insert date), which was within the period of (Former Supplier)’s surety bond coverage with your company. Moreover, CMS has made its overpayment determination within the 2-year period following the date of the termination of (Former Supplier)’s Medicare enrollment. Consistent with 42 C.F.R. §424.57(d)(5)(i)(A), therefore, CMS requests that (Surety) make payment to CMS in the amount of (insert applicable amount) no later than 30 days from the date of this letter. Payment shall be made via check or money order and sent to the following address:

Contractor Name  
Address  
City, State and Postal ZIP Code

The payee shall be (insert DME MAC), which is CMS’s Durable Medical Equipment Medicare Administrative Contractor for (Supplier)’s location.

Failure to make the requested payment in a timely manner may result in referrals to the United States Department of Justice for collection action, and/or the United States Department of the Treasury for revocation of [surety name’s] authority to provide federal bonds.

Should you have any questions about this letter, please do not hesitate to contact \_\_\_\_\_ at \_\_\_\_\_. (The contractor shall identify a specific individual who the surety can contact if questions arise.)

Sincerely,  
(Name and title)

cc: Supplier Name

**C. Letter for Civil Monetary Penalties and Assessments – Supplier is Still Enrolled in Medicare**

Date

Surety Name  
Surety Address

RE: Supplier Legal Business Name  
Supplier DBA Name (if any)  
Supplier Address  
Supplier NPI

Dear Surety:

(Supplier legal business name) is currently enrolled in the Medicare program as a supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). As a condition of its Medicare enrollment, (Supplier) is required – under Federal regulations at 42 C.F.R. §424.57(d) - to maintain a surety bond in an amount of no less than \$50,000. In accordance with this provision, (Supplier) has a \$ \_\_\_\_\_ surety bond with your company.

Consistent with 42 C.F.R. §424.57(d)(5)(i)(A), the surety must pay CMS – upon receiving written notice from CMS containing sufficient evidence to establish the surety’s liability under the bond – the amount of any civil monetary penalty (CMP) and/or assessment for which the DMEPOS supplier is responsible, up to the full penal amount of the bond. (Insert applicable language.....)

A CMP is defined in §424.57(a) as a sum that CMS has the authority, as implemented by 42 C.F.R. §402.1(c) (or the Department of Health and Human Services Office of Inspector General (OIG)) has the authority, under section 1128A of the Act or 42 C.F.R. Part 1003) to impose on a supplier as a penalty.

OR

An assessment is defined as a sum certain that CMS or the Department of Health and Human Services Office of Inspector General (OIG) may assess against a DMEPOS supplier under Titles XI, XVIII or XXI of the Social Security Act.)

(CMS or OIG, as applicable) imposed a (CMP and/or assessment, as applicable) on (Supplier) on (date) in the amount of (\$ \_\_\_\_). The (CMP and/or assessment) was imposed because (insert explanation, using information furnished by CMS or OIG).

Relevant documentation supporting our determination is attached to this letter. (Attach copy of notice of CMP/assessment that was sent to supplier.)

(CMS or OIG, as applicable) has attempted to recover the amount of the (CMP or assessment) from (Supplier) using its existing collection procedures. (Supplier), however, has repaid (insert “none” or “only \$\_\_\_\_) of this amount. Consistent with 42 C.F.R. §424.57(d)(5)(i)(A), therefore, CMS requests that (Surety) make payment to CMS in the amount of (insert applicable amount) no later than 30 days from the date of this letter. Payment shall be made via check or money order and sent to the following address:

Contractor Name  
Address  
City, State and Postal ZIP Code

The payee shall be the Centers for Medicare and Medicaid Services.

Failure to make the requested payment in a timely manner may result in referrals to the United States Department of Justice for collection action, and/or the United States Department of the Treasury for revocation of [surety name’s] authority to provide federal bonds.

Should you have any questions about this letter, please do not hesitate to contact \_\_\_\_\_ at \_\_\_\_\_.  
(The contractor shall identify a specific individual who the surety can contact if questions arise.)

Sincerely,  
(Name and title)

cc: Supplier Name

**D. Letter for Civil Monetary Penalties and Assessments – Supplier is No Longer Enrolled in Medicare**

Date

Surety Name  
Surety Address

RE: Former Supplier Legal Business Name  
Former Supplier DBA Name (if any)  
Former Supplier Address  
Former Supplier NPI

Dear Surety:

(Former Supplier legal business name) was enrolled in Medicare as a supplier of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) until (insert effective date of termination/revocation). As a condition of its Medicare enrollment, (Former Supplier) was required – under Federal regulations at 42 C.F.R. §424.57(d) - to maintain a surety bond in an amount of no less than \$50,000. In accordance with this provision, (Former Supplier) obtained a \$\_\_\_\_\_ surety bond with your company.

Consistent with 42 C.F.R. §424.57(d)(5)(i)(A), the surety must pay CMS – upon receiving written notice from CMS containing sufficient evidence to establish the surety’s liability under the bond – the amount of any civil monetary penalty (CMP) and/or assessment for which the DMEPOS supplier is responsible, up to the full penal amount of the bond. (Insert applicable language.....)

A CMP is defined in §424.57(a) as a sum that CMS has the authority, as implemented by 42 C.F.R. §402.1(c) (or the Department of Health and Human Services Office of Inspector General (OIG) has the authority, under section 1128A of the Act or 42 C.F.R. Part 1003)) to impose on a supplier as a penalty.

OR

An assessment is defined as a sum certain that CMS or the Department of Health and Human Services Office of Inspector General (OIG) may assess against a DMEPOS supplier under Titles XI, XVIII or XXI of the Social Security Act.)

(CMS or OIG, as applicable) imposed a (CMP and/or assessment, as applicable) on (Former Supplier) on (date) in the amount of (\$ \_\_\_\_\_). The (CMP and/or assessment) was imposed because (insert explanation, using information furnished by CMS or OIG).

Relevant documentation supporting our determination is attached to this letter. (Attach copy of notice of CMP/assessment that was sent to former supplier.)

(CMS or OIG, as applicable) has attempted to recover the amount of the (CMP or assessment) from (Former Supplier) using its existing collection procedures. (Former Supplier), however, has repaid (insert “none” or “only \$\_\_\_\_\_”) of this amount.

(Former Supplier)’s surety bond coverage with your company ended on (insert date). However, consistent with 42 C.F.R. §424.57(d)(5)(iii), the surety is liable for CMPs and/or assessments that:

- (1) CMS or OIG imposed or asserted against the supplier during the term of the bond or rider, and
- (2) Were imposed or assessed by CMS during the 2 years following the date that the supplier failed to submit a bond or required rider or the date that the supplier’s Medicare enrollment was terminated, whichever is later.

The (CMP and/or assessment) was based on events that occurred (insert relevant date(s)), which was within the period of (Former Supplier)’s surety bond coverage with your company. Moreover, CMS imposed the (CMP and/or assessment) within the 2-year period following the date of the termination of (Former Supplier)’s Medicare enrollment. Consistent with 42 C.F.R. §424.57(d)(5)(i)(A), therefore, CMS requests that (Surety) make payment to CMS in the amount of (insert applicable amount) no later than 30 days from the date of this letter. Payment shall be made via check or money order and sent to the following address:

Contractor Name  
Address  
City, State and Postal ZIP Code

The payee shall be the Centers for Medicare & Medicaid Services.

Failure to make the requested payment in a timely manner may result in referrals to the United States Department of Justice for collection action, and/or the United States Department of the Treasury for revocation of [surety name’s] authority to provide federal bonds.

Should you have any questions about this letter, please do not hesitate to contact \_\_\_\_\_ at \_\_\_\_\_. (The contractor shall identify a specific individual who the surety can contact if questions arise.)

Sincerely,  
(Name and title)

cc: Supplier Name

**E. Surety Non-Payment Letter**

Date

Surety Name  
Surety Address

RE: Supplier Legal Business Name  
Supplier DBA Name (if any)  
Supplier Address

Supplier National Provider Identifier (NPI)

Dear Surety:

Consistent with 42 C.F.R. § 424.57(d)(5)(i)(A), we sent you a letter dated (date of letter) requesting that you make payment to CMS in the amount of (insert applicable amount) no later than 45 days from the date of said letter, a copy of which is attached. (Attach a copy of the demand letter.) As payment has not been received, this matter may be referred for further action to the United States Department of Justice for collection and/or the United States Department of the Treasury for revocation of [surety name's] authority to provide federal bonds.

Should you have any questions about this letter, please do not hesitate to contact \_\_\_\_\_ at \_\_\_\_\_.  
(The contractor shall identify a specific individual who the surety can contact if questions arise.)

Sincerely,  
(Name and title)

cc: Supplier Name