

CMS Announces Surety Bond Requirements for DMEPOS Suppliers

On December 29, 2008, the Centers for Medicare & Medicaid Services (CMS) announced regulations requiring suppliers of certain durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) to post a surety bond as a condition of new or continued Medicare enrollment. The regulation states that beginning May 4, 2009 suppliers seeking to enroll or changing the ownership of a DMEPOS supplier must submit a \$50,000 surety bond for each assigned NPI for which the DMEPOS supplier is seeking to obtain Medicare billing privileges. Existing DMEPOS suppliers must submit to the NSC a \$50,000 surety bond for each assigned NPI beginning on October 2, 2009.

In addition, a DMEPOS supplier enrolling a new practice location must submit to the NSC a new surety bond or an amendment or rider to the existing bond, showing the new practice location is covered by an additional base surety bond of \$50,000.

Suppliers who have certain adverse legal actions imposed against them in the past may be required to post a higher bond amount. The final regulations permit the NSC to require DMEPOS suppliers to obtain a base surety bond of \$50,000 and an elevated surety bond of \$50,000 for each occurrence of an adverse legal action within ten years preceding enrollment, revalidation, or reenrollment in the Medicare program.

The final regulations are effective March 3, 2009. Some companies or organizations that supply DMEPOS are exempt from the surety bond requirements. Such exemptions include:

- Certain physician and non-physician practitioners
- Physical therapists
- Occupational therapists
- State-licensed orthotic and prosthetic personnel
- Government-owned suppliers

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For more information or to view the regulation in its entirety, visit <http://edocket.access.gpo.gov/2009/pdf/E8-30802.pdf>.



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Accreditation Information

- Suppliers exempt from accreditation are:
 - Suppliers providing drugs and pharmaceuticals *ONLY*
 - Physicians (including Dentists)
 - Audiologists
 - Optometrists
 - Orthotists
 - Prosthetists (including Occularists)
 - Opticians
 - Occupational Therapists
 - Physical Therapists

Exempt suppliers are reminded that accreditation exemptions only extend to the normal scope of services for the supplier specialty.

- A pharmacy that is physician owned does not give it an exemption from accreditation. Each pharmacy needs to be accredited unless it only supplies biologicals (anti-cancer drugs, anti-emetics, etc.).
- Pharmacy suppliers choosing to provide pharmaceuticals only must update their file with the NSC to reflect the products and services that will be provided to Medicare beneficiaries in section 2C of the CMS-855S enrollment form. Suppliers found to be in violation by billing for other products or services will be subject to appropriate actions up to and including revocation.

As Posted in MLN Matters –January 6, 2009

CR 6282- Incorporation of Regulatory Revisions Pertinent to DMEPOS Suppliers

Provider Types Affected

Suppliers submitting claims to Medicare contractors (DME Medicare Administrative Contractors (DME MACs) for services provided to Medicare beneficiaries.

Provider Action Needed

This article is informational in nature and based on Change Request (CR) 6282 which incorporates recent regulatory changes and applicable instructions for the National Supplier Clearinghouse – Medicare Administrative Contractor (NSC-MAC) into the Medicare Program Integrity Manual (Chapter 10 (Healthcare Provider/Supplier Enrollment)).

Background

The Medicare Program Integrity Manual (Chapter 10) specifies the procedures Medicare fee-for-service contractors must use to establish and maintain provider and supplier enrollment in the Medicare program. Change Request (CR) 6282 incorporates National Supplier Clearinghouse – Medicare Administrative Contractor (NSC-MAC) instructions into the Medicare Program Integrity Manual, Chapter 10 (Healthcare Provider/Supplier Enrollment), Section 21 (Special Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Instructions. These NSC-MAC instructions evolved from recent regulatory revisions regarding the following topics:

The timeframe in which providers and suppliers must furnish developmental information to the NSC-MAC; Effective dates of certain types of revocations; Alert codes; and Accreditation.

A complete description of these NSC-MAC instructions/topics is included as an attachment to CR 6282, and the following provides a summary:

1) The timeframe in which providers and suppliers must furnish developmental information to the contractor

A Medicare contractor (including the NSC-MAC) may reject a provider/supplier's application if the provider/supplier fails to furnish complete information on the enrollment application, including all supporting documentation, within 30 calendar days from the date of the contractor's request for the missing information or documentation.

The 30-day clock starts on the date the pre-screening letter was sent to the provider/supplier. If the contractor makes a follow-up request for information, the 30-day clock does not start anew; rather, it keeps running from the date the pre-screening letter was sent. To illustrate, suppose that the contractor sent out a pre-screening letter on March 1 (thus triggering the 30-day clock) that asked for clarifying information in Sections 4 and 5 of the CMS-855B. (All supporting documentation was provided.) The provider sent in most, but not all of the requested data. Though not required to make an additional contact beyond the pre-screening letter, the contractor telephoned the provider on March 20 to request the remaining missing data. The provider failed to respond. The contractor can reject the application on March 31, which is 30 days after the initial request.

2) Effective dates of certain types of revocations

A revocation is effective 30 days after the Centers for Medicare & Medicaid Services (CMS) or the Medicare contractor (including the NSC-MAC) mails the notice of its determination to the provider or supplier. However, a revocation based on a Federal exclusion or debarment is effective with the date of the exclusion or debarment. In addition, if the revocation was due to the revocation or suspension of the provider/supplier's license or certification to perform Medicare services, said revocation can be made retroactive to the date of the license suspension/revocation.

3) Alert codes

The NSC-MAC will receive and maintain "alert indicators" based on findings from the DME-MACs as well as on information received from Medicare's Program Integrity contractors.

provide only drugs and pharmaceuticals are exempt from the accreditation requirement; however, if the supplier provides equipment to administer drugs or pharmaceuticals, the supplier must be accredited.

If a previously exempted supplier enrollment application was returned for non-accreditation, the supplier must resubmit its CMS 855S Medicare enrollment application to the NSC to obtain/maintain Medicare billing privileges.

CR 6282 Continued from page 2**4) Accreditation**

The NSC-MAC will follow the accreditation requirements in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). Individual medical practitioners, inclusive of group practices of same, will not currently require accreditation for enrollment. The practitioner types are those specifically stated in Sections 1848(K)(3)(B) and 1842(b)(18)(C) of the Social Security Act as Amended. In addition, the practitioner categories of physicians, orthotists, prosthetists, optometrists, opticians, audiologists, occupational therapists, physical therapists and suppliers who provide drugs and pharmaceuticals (only) will not currently require accreditation for enrollment. Suppliers that fall in this subset who provide other durable medical equipment outside of their specialty are required to be accredited to bill Medicare as a DMEPOS supplier. DMEPOS companies that are owned by any exempted individuals are NOT exempt from accreditation. For example, physicians are exempt from accreditation requirements for supplies they provide to their physician practice patients; however, if a physician owns a DMEPOS company, that company is NOT exempt from accreditation. Similarly, suppliers that provide only drugs and pharmaceuticals are exempt from the accreditation requirement; however, if the supplier provides equipment to administer drugs or pharmaceuticals, the supplier must be accredited. If a previously exempted supplier enrollment application was returned for non-accreditation, the supplier must resubmit its CMS 855S Medicare enrollment application to the NSC to obtain/maintain Medicare billing privileges.

Additional Information

The official instruction, CR 6282, issued to your DME MAC regarding this change may be viewed at <http://www.cms.hhs.gov/Transmittals/downloads/R280PI.pdf> on the CMS website.

If you have any questions, please contact DME MAC at their toll-free number, which may be found at <http://www.cms.hhs.gov/MLNProducts/downloads/CallCenterTollNumDirectory.zip> on the CMS website.

DMEPOS Supplier Enrollment Bar

On June 27, 2008, the Centers for Medicare & Medicaid Service published a final rule titled, "Appeals of CMS or CMS Contractor Determinations When a Provider or Supplier Fails to Meet the Requirements for Medicare Billing Privileges (CMS 6003-F)" in the Federal Register. This final rule establishes an enrollment bar for those providers and suppliers whose billing privileges are revoked. The enrollment bar will require that providers and suppliers whose billing privileges are revoked wait from **one to three years before reapplying to participate** in the Medicare program depending on the severity of the infraction. The National Supplier Clearinghouse is enforcing this rule. DMEPOS suppliers are reminded to adhere to the guidelines as outlined in the 25 Supplier Standards to ensure compliance and avoid revocation. Specific information regarding debarment infractions will be provided as released by CMS.

Test your NSC Knowledge -Q's

1. Within how many days should a supplier notify the NSC of any change of information?
2. Suppliers should notify the NSC of their accreditation information no later than what date?
3. Can a supplier appeal a rejected CMS-855S application?

Responding Timely to Development Requests

Suppliers are reminded to send complete, accurate information when enrolling or submitting changes of information to the NSC. If information is missing or incomplete, the application will be developed where the supplier is contacted to send additional information. If development requests are not received within 30 days or are received but not complete, the supplier's billing privileges may be inactivated and the supplier will need to reapply and include all necessary documentation including proof of accreditation if required by the supplier type.

Re-Enrollment Update

CMS requires that all DMEPOS suppliers with Medicare billing privileges re-enroll with the Medicare program every three years through the NSC. Re-enrollment packets may not necessarily be mailed on the anniversary date of the supplier's billing privileges. The NSC will resume mailing re-enrollment packets to suppliers starting this spring. Upon receipt of the re-enrollment packet, suppliers are required to complete and return the application and submit required documentation to the NSC within 35 days. Suppliers may request one (1) 60-day extension by calling NSC customer service. If the NSC does not receive the completed re-enrollment packet, the supplier's billing privileges are subject to normal filing rules including revocation or inactivation. For more information, contact NSC Customer Service during regular operating hours- Monday –Friday, 9:00 am- 5:00 pm, EST.

Surety Bond FAQs- as issued by CMS

1. What is a DMEPOS surety bond?

A DMEPOS surety bond is a [bond](#) issued by an [entity](#) (the surety) guaranteeing that a DMEPOS supplier will fulfill an obligation or series of obligations to a [third party](#) (the Medicare program). If the obligation is not met, the third party will recover its [losses via](#) the bond.

2. How do I obtain a surety bond?

You should contact one of the sureties identified on the U.S. Department of Treasury's "Listing of Certified (Surety Bond) Companies;" the Web site for this listing is 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 a bond may be obtained.

If the surety determines that your supplier poses a higher risk of loss, some sureties may choose not to offer you a bond, or may offer you a bond but only at an elevated cost.

3. How much will the bond cost?

We estimate that the average annual bond cost is approximately 3 percent of the value of the bond. Thus, the annual cost to the supplier of a \$50,000 bond will be around \$1,500.

4. When will the surety bond requirement become effective?

Suppliers enrolling in the Medicare program for the first time, existing suppliers undergoing a change of ownership, or existing suppliers establishing a new practice location are required to submit a surety bond to the National Supplier Clearinghouse (NSC) with their CMS-855S enrollment application on or before May 4, 2009. Absent an exception to the bonding requirement, the NSC will reject a pending supplier's enrollment application if the supplier has not submitted a valid surety bond by May 4, 2009.

Enrolled DMEPOS suppliers subject to the bonding requirement are required to submit a valid surety bond to the NSC by October 2, 2009.

5. I am an existing supplier who is subject to the October 2, 2009 date. Should I obtain a bond now, or should I wait until that date to obtain one?

We recommend that suppliers that have to meet the October 2, 2009 implementation date should begin the work for the bonding as soon as possible.

6. What should the dollar amount of the bond be?

The bond must be in an amount not less than \$50,000; however, a higher bond amount will be required if the DMEPOS supplier has had a final adverse action imposed against it within the past 10 years; specifically, the necessary bond amount will be raised by an additional \$50,000 for each final adverse action that has been imposed against the supplier within the previous 10 years. For purposes of the surety bond requirement, a "final adverse action" is defined as any of the following:

- A Medicare-imposed revocation of any 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 for a Federal or State felony offense (as defined in §424.535(a)(3)(i)) within the last 10 years preceding enrollment, revalidation, or re-enrollment; or
- An exclusion or debarment from participation in a Federal or State health care program.

7. I have multiple DMEPOS supplier locations. Do I need to obtain a bond for each location?

Yes. Suppliers subject to the bonding requirement are required to obtain a surety bond for each practice location that has a separate National Provider Identifier (NPI). Thus, if a supplier has two separately-enrolled DMEPOS locations, each with its own NPI, it must obtain \$50,000 worth of bond coverage for each location. This can be accomplished by obtaining two \$50,000 bonds or a single \$100,000 bond. If the supplier elects to obtain one bond that covers multiple locations, however, the bond must specify the locations it encompasses.

8. What sort of paperwork do I need to submit to prove that I have obtained the necessary surety bond?

A copy of the bond agreement, as well as any certificates of proof, should be submitted. If the NSC requires additional supporting documentation, it will contact the supplier accordingly.

9. Are there any DMEPOS supplier types that are exempt from obtaining a surety bond?

Yes. The following DMEPOS suppliers are exempt from the surety bond requirement found in 42 CFR 424.57(c)(26):

Government-operated DMEPOS suppliers are provided an exception to the surety bond requirement if the DME supplier has provided CMS with a comparable surety bond under State law.

State-licensed orthotic and prosthetic personnel in private practice making custom- made orthotics and prosthetics are exempted from the surety bond requirement if: (1) the business is solely-owned and operated by the orthotic and prosthetic personnel, and (2) the business is only billing for orthotics, prosthetics, and supplies.

FAQs continued on page 5.

Surety Bond FAQs- Continued from page 5

Physicians and non-physician practitioners, as defined in section 1842(b)(18) of the Social Security Act, are exempted from the surety bond requirement when items are furnished only to the physician or non-physician practitioner's own patients as part of his or her own service.

Physical and occupational therapists in private practice are exempted from the surety bond requirement if: (1) the business is solely-owned and operated by the physical or occupational therapist; (2) the items are furnished only to the physical or occupational therapist's own patients as part of his or her professional service; and (3) the business is only billing for orthotics, prosthetics, and supplies.

All other DMEPOS suppliers are subject to the surety bond requirement.

10. What events must the bond cover?

The supplier is required to submit a bond that - on its face - reflects the requirements of the surety bond final rule. 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, or assessments - pay CMS a total of up to the full penal amount of the bond in the following amounts:
 - (A) The amount of any unpaid claim, plus accrued interest, for which the DMEPOS supplier is responsible.
 - (B) The amount of any unpaid claims, civil monetary penalties, or assessments imposed by CMS or the Office of Inspector General on the DMEPOS supplier, plus accrued interest.
- A statement that the surety is liable for unpaid claims, civil monetary penalties, 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.

The bond must also name 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 surety.

11. I am a State-licensed prosthetist in solo private practice. For purposes of the exception for State-licensed protestists identified in 42 CFR 424.57(d)(15)(i)(B), does it make a difference if my practice is set up as a solely-owned corporation or LLC, rather than as a sole proprietorship?

No. So long as the prosthetist owns 100 percent of his/her business, it is immaterial whether the business is organized as a sole proprietorship or a solely-owned LLC or corporation.

12. Can group practices avail themselves of the exceptions to the surety bond requirements? In other words, are the exemptions for physicians, non-physician practitioners, prosthetists, etc., identified in 42 CFR 424.57(d)(15)(i)(B) through (D) limited to sole proprietorships and solely-owned LLCs and corporations?

As a general rule, a group practice is eligible for an exemption to the surety bond if each member of the group would – if he/she was operating as a solo practitioner – qualify for the exemption on his/her own. Thus, for instance, if three prosthetists are in private practice together, each prosthetist must be licensed by the State and have an ownership interest in the business; moreover, the three prosthetists must be the only owners and operators of the business. Likewise, if two physicians operate their own group practice, each physician in the practice must furnish DMEPOS items only to his or her own patients as part of his or her own service in order for the physician group to qualify for the bond exemption.

13. With respect to the exemption for government-operated DMEPOS suppliers that furnish CMS with a comparable surety bond under State law, what is meant by the phrase “comparable surety bond under State law?”

It means that if the supplier furnishes to CMS a copy of a surety bond that: (1) is currently in effect, (2) the supplier was required to obtain pursuant to State law, and (3) otherwise meets all of the criteria required under 42 CFR 424.57(d)(26) (e.g., \$50,000 amount; same bond terms), the supplier need not obtain an additional \$50,000 in bond coverage for its Medicare DMEPOS enrollment.

14. Does the exemption for State-licensed orthotists in private practice apply regardless of the type of orthotics he or she provides? For instance, can an orthotist who furnishes only “prefabricated” and “off-the-shelf” items and services be exempt from the bond requirement?

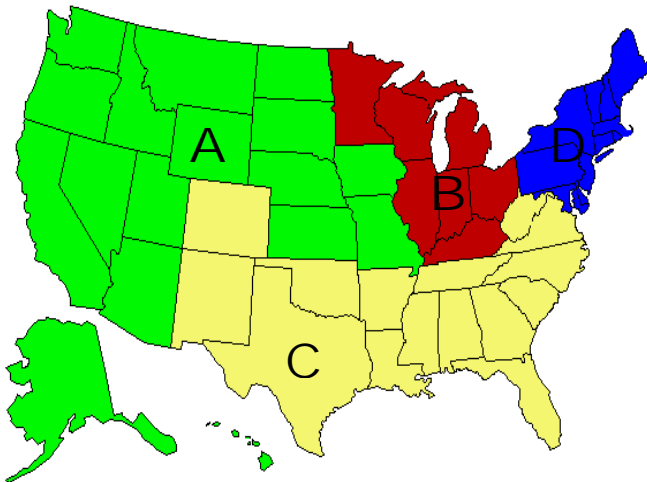
The language in 42 CFR 424.57(d)(15)(i)(B) states as follows: “State-licensed orthotic and prosthetic personnel in private practice making custom-made orthotics and prosthetics are provided an exception to the surety bond requirements.....” The practitioner must therefore be “*making* custom-made orthotics and prosthetics,” which would therefore exclude persons who furnish only “prefabricated” and “off-the-shelf” items from the purview of the exemption.

15. Suppose a physical or occupational therapist is employed by a physician practice that otherwise qualifies for an exception to the bond requirement. Does this mean that the therapist is also exempt from the bond requirement?

No, for the business is not solely-owned and operated by the physical or occupational therapist.

16. If a physical or occupational therapist bills for DMEPOS items such as wheelchairs and oxygen equipment, can he or she still qualify for an exemption to the bond requirement?

No. The therapist must only be billing for prosthetics, orthotics and supplies.



- Noridian Administrative Services
- National Government Services
- Cigna Government Services
- NHIC, Corp

Contacting the DME MACs

Jurisdiction A – NHIC, Corp

CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT

Supplier Customer Service: (866) 590-6731

Interactive Voice Response Unit: (866) 419-9458

Jurisdiction B – National Government Services

IL, IN, KY, MI, MN, OH, WI

Supplier Customer Service: (866) 590-6727

Interactive Voice Response Unit: (877) 299-7900

Jurisdiction C – CIGNA Government Services

AL, AR, CO, FL, GA, LA, MS, NC, NM, OK, PR, SC, TN, TX, VI, VA, WV

Supplier Customer Service: (866) 270-4909

Interactive Voice Response Unit: (866) 238-9650

Jurisdiction D – Noridian Administrative Services

AK, AS, AZ, CA, GU, HI, IA, ID, KS, MO, MP, MT, ND, NE, NV, OR, SD, UT, WA, WY

Supplier Customer Service: (866) 243-7272

Interactive Voice Response Unit: (877) 320-0390

Common Electronic Data Interchange (CEDi)

All Billing Jurisdictions

866-311-9184

NSC Customer Service

Monday-Friday

9:00 am- 5:00 pm, EST

1-866-238-9652

CONTACT US

Mailing Address:

National Supplier Clearinghouse
P.O. Box 100142
Columbia, SC 29202-3142

Overnight Mailing Address:

Palmetto GBA
National Supplier Clearinghouse AG-495
2300 Springdale Dr, Bldg. 1
Camden, SC 29020

Phone Number: 1-866-238-9652

9:00 am-5:00 pm M-F (EST)

Web Site:

<http://www.PalmettoGBA.com/NSC>

E-mail: medicare.nsc@palmettogba.com

NSC Education on the Go

March 24, 2009- Spring MedTrade

April 2, 2009- New Jersey Association (JAMES)

May 6, 2009- Pacific Association (PAMES)

Want to invite the NSC to your Association's Conference?

Email- Medicare.NSC@palmettogba.com.

Subject –Educational Opportunity

NSC Web Site

The NSC Web site has valuable information regarding the enrollment process. To browse, visit

www.PalmettoGBA.com/NSC.

The **"Articles"** folder will give you the latest announcements as well as general information, such as the NSC addresses or maps showing DME MAC coverage and the NSC team breakdown.

Under **"Supplier Enrollment"**, you'll find various forms and information that will assist you as you work with the NSC, including the CMS 855S application form.

The **"FAQs"** folder may be found under "Supplier Enrollment" and has a break down of categories where you'll find answers to your questions.

REGISTER FOR THE NSC LISTSERV MESSAGES

Test Your NSC Knowledge – A's

1. 30
2. October 1, 2009
3. No. Rejected applications can not be appealed.