

## SURETY BOND REQUIREMENT FOR DENTISTS ENROLLED AS DMEPOS SUPPLIERS

### Summary

On June 1, 2019, the National Supplier Clearinghouse (NSC) will begin to send notification to enrolled dentists that a surety bond may be required to initiate or continue their Medicare enrollment as a Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) supplier. The surety bond requirement will only extend to dentists if they do not qualify for the surety bond exception at 42 CFR 424.57(15)(i)(C) which exempts practitioners who are furnishing DMEPOS items only to Medicare beneficiaries that are the practitioner's own patients as part of his or her physician services.

This effort supports CMS' commitment to limiting Medicare's risk from fraudulent suppliers, enhancing the enrollment process to ensure that only legitimate suppliers are enrolled or remain enrolled, and ensuring recovery of erroneous payments resulting from fraudulent billing practices, and ensuring that beneficiaries receive products and services that are reasonable and necessary from legitimate suppliers.

### Background

- In the spring of 2017, the NSC's Supplier Audit and Compliance Unit (SACU) noticed an increase in site visits requested for new applications from dentists enrolling as DMEPOS suppliers. Additional research showed there was an 86% increase in dentists enrolling as DMEPOS suppliers with the NSC from July 2015 – July 2017.
- In June 2017, after conducting several site visits, the NSC uncovered that most dentists were providing items prescribed by other providers. Specifically, most dentists were furnishing oral appliance therapy for sleep apnea, which comprises of DMEPOS items that require a written order from the treating physician.
- On December 29, 2018 and April 1, 2019, CMS had telephone calls with representatives of the American Dentist Association (ADA) to answer questions and provide information related to the basis of the notification, surety bond requirements and potential implications.
- By letter dated January 31, 2019, the American Dental Association (ADA) requested clarification from CMS as it relates to whether or not Medicare beneficiaries become a patient of a dentist when the patient is examined and impressions of the patient's mouth are made to create and furnish the ordered oral appliance(s).
- CMS issued a response to the ADA explaining why dentists do not qualify for the surety bond exception at 42 CFR 424.57(d) (15) (i) (C). That is, a dentist is acting exclusively as a DMEPOS supplier when furnishing an oral appliance prescribed by another practitioner. Additionally, all suppliers who perform tasks which involve device fitting typically assess the patient for that device as was cited in the examples. The exception outlined in 42 CFR § 424.57(d) (15) (i) (C) extends only to services in which the diagnosis, prescription, and fitting occur "as part of" the physician service.
- Per the Local Coverage Determination (LCD) for Oral Appliances for Obstructive Sleep Apnea (L33611), dentists may not generate the written order themselves since they are not permitted to perform and interpret sleep tests and diagnose obstructive sleep apnea. Therefore, as a DMEPOS supplier, the dentist must have a letter of medical necessity from the treating physician in order to fit a patient for these items.
- As such, dentists do not meet the exemption for surety bonds under 424.57(d) (15)(C) which

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states, “Physicians and nonphysician practitioners as defined in section 1842(b)(18) of the Act are provided an exception to the surety bond requirement when items are furnished only to the physician or nonphysician practitioner's own patients as part of his or her physician service.”

- Section 4312(a) of the Balanced Budget Act of 1997 amended section 1834(a) of the Social Security Act to require, as a condition of enrollment, that DMEPOS suppliers maintain a surety bond of at least \$50,000. Thereafter, CMS issued a final rule (CMS-6006-F), effective March 3, 2009, requiring DMEPOS suppliers that do not meet the exemption defined at 42 CFR 424.57(15)(i) to obtain and maintain a minimum of \$50,000 in surety bond coverage per location.
- Per 42 CFR 424.57(d)(15)(ii), “A DMEPOS supplier that no longer qualifies for an exception as described in paragraph (d)(15)(i) of this section must submit a surety bond to the CMS contractor in accordance with requirements of paragraph (d) of this section within 60 days after it knows or has reason to know that it no longer meets the criteria for an exception.”
- If a provider fails to obtain, file timely or maintain a surety bond as specified in 42 CFR 424.57, CMS will deactivate the supplier’s billing privileges. Any payments for items furnished on or after the effective date of the deactivation must be repaid to CMS by the DMEPOS supplier. Additionally, CMS will deny billing privileges to a dentist if said dentist seeking to become enrolled as a DMEPOS supplier fails to obtain and file timely a surety bond, as specified in 42 CFR 424.57.
- As of April 2019, there are 1,365 dentists enrolled as DMEPOS suppliers in Medicare. On June 1, 2019, the NSC will begin to send notification to enrolled dentists that a surety bond is required if they are furnishing any items to Medicare beneficiaries that have been prescribed by another practitioner.
- The notice will also outline three actions that the supplier must take within 60 days of the date of the notice, to include the opportunity to provide proof of a valid surety bond, voluntarily terminate their DMEPOS enrollment, or provide proof that all DMEPOS items provided are for the supplier’s own patients as part of their physician service.

**Additional Information**

- For more information on Section 4312(a) of the Balanced Budget Act of 1997 or 42 CFR § 424.57, you may review the relevant final rules, which can be downloaded from the Government Publishing Office at: <https://www.govinfo.gov/>.
- For more information on the Local Coverage Determination (LCD) for Oral Appliances for Obstructive Sleep Apnea (L33611), you may review the LCD, which can be downloaded from the Medicare Coverage Database at: <https://www.cms.gov/medicare-coverage-database/>.