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The current proposed rule to require DME providers to post a surety bond is a good idea however, as proposed it is significantly flawed on three points. The adjustment for inflation over the original proposal is not based on reimbursement levels or risk, the one size fits all level places disproportionate burden on smaller suppliers and the proposal to exempt large publicly traded corporations gives an unfair advantage to large corporate interests and prevents most of the protection the surety bond is designed to provide.

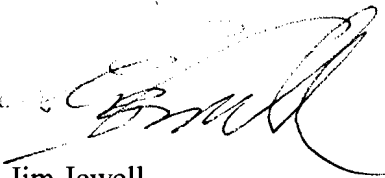
The first point being that the bond level being adjusted upward for inflation from the original proposed amount of \$50,000 in 1997 to the new considered amount of \$65,000. Considering that the reimbursement paid by Medicare to the DME suppliers for services was cut by over 20% over this same time period this adjustment is inconsistent. If an adjustment was to be made to the bond requirement it should be adjusted down to reflect the changes in the reimbursements for services being paid to the DME suppliers for most products. It is grotesquely hypocritical to cut the reimbursements paid to DME suppliers but make the requirements for surety bonds increase proportional to the CPI when there have been no increases in the reimbursement to suppliers for inflation in the last five years. It is insulting to continually cut benefits paid for DME suppliers yet increase their costs in accordance with the CPI. If this proposal proceeds it should be recalculated to reflect the proposal based on the cuts paid to DME suppliers (with the average of 20% cuts the new surety bond should be \$40,000). If one adjusted the surety bond level to reflect not only the cuts to reimbursements but also the lack of any adjustments for CPI increases the bond level would be cut by more than 20%.

The second flaw in the proposal is holding the same level of surety bond requirement for all suppliers regardless of level of Medicare reimbursement activity. The Bond required should reflect the amount of risk to the Medicare System truly designed to protect the system from fraud. If a very large provider is doing several hundred million dollars a year in Medicare business the bond posted should be much larger than what would be required from the small provider only doing several thousands of dollars of business a year. The bond should reflect the magnitude of business being conducted for Medicare beneficiaries by that NPI. Without taking into account the magnitude of Medicare business being conducted by the DME supplier the

proposed bond requirement would grossly penalizes small business, and yet, provide almost no real protection to the Medicare system. The way the current law is proposed it is designed to disadvantage small providers and be immaterial to large business and offer no real protection to the Medicare System considering the percentage of Medicare reimbursement going to large companies instead of small providers.

The third flaw is the proposal to establish an **exception** to the surety bond requirement for large, publicly traded chain suppliers of DMEPOS” this is obviously unfair to all small and private held providers by giving a cost advantage to large business over small business. Recent settlements from large national DME suppliers to CMS would indicate that the protection is needed from them more than from small providers. Why would the Federal government try to give an unfair advantage to large companies over small business when the risk that the Surety Bond is designed to mitigate would be higher for large companies?

In conclusion, if the surety bond proposal does proceed, the amount of surety bond required should be proportional to the amount of Medicare business the DME is billing. Not adjusting the amount to reflect the size and magnitude of Medicare billing is of no value to the system as a whole, considering the potential risk of fraud correlates with the magnitude of Medicare billing. The current proposal simply penalizes small providers’ disproportionately to large ones and offers little or no protection the Medicare system. Making exceptions for large national publicly traded companies simply creates a business advantage for the powerful over the small business man and doesn’t adequetly protect the Medicare System.



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