

MOA MEMBERS
FROM SUE A. WEINGARTNER, EXECUTIVE DIRECTOR
SEPTEMBER 25, 2009

DMEPOS SURETY BOND UPDATE

Please see the following message from the AOA regarding the latest information on the surety bond issue.

Sent: Friday, September 25, 2009 3:51 PM
To: State Executive Directors
Subject: DMEPOS surety bond update
Importance: High

The following information for state executive directors and CAC representatives will need to be replaced or updated once we get a response from CMS. I hope to have a positive response we can report to members very soon. Meanwhile, this is the current situation:

The Centers for Medicare & Medicaid Services (CMS) continues to consider whether to revise its restrictive position, announced earlier this month and disputed by AOA and the American Academy of Ophthalmology, that optometrists and ophthalmologists who supply post-cataract eyeglasses to Medicare beneficiaries who come to the office with a prescription are acting as medical supply companies and need to have a surety bond. Please look for more guidance on the AOA website, in AOA First Look, and in other electronic communication from AOA and state associations prior to the October 2 deadline to obtain a surety bond.

The National Supplier Clearinghouse (NSC), on behalf of CMS, stated: "An optometrist or ophthalmologist who dispenses eyeglasses can qualify for the physician exemption if the glasses are furnished ONLY to his/her own patients as part of his/her own service. For purposes of this exemption, a 'patient' is someone who, for instance, receives an eye exam or other diagnostic test from the physician prior to receiving the glasses. The term 'patient' does not include, however, a person who walks into the physician's office with a prescription for glasses that was issued by another physician and simply receives the glasses without any sort of examination or test being furnished. The same general principle applies to an enrolled optical center owned by an optometrist or ophthalmologist. The center can only qualify for the physician exemption only if: (1) the shop and the physician's practice are under/within the same TIN [taxpayer identification number] and business structure (e.g., part of the same corporation), and (2) the glasses are furnished only to the optometrist/ophthalmologist's own patients as part of his/her own service. The term 'patient,' again, would not include a person who enters the optical center with a prescription for glasses that was issued by another physician and simply receives the glasses without any sort of examination or test being performed by the optical center."

Congress exempted physicians from the surety bond requirement, and AOA believes practicing physicians who supply post-cataract eyeglasses to Medicare beneficiaries with a prescription from another physician are providing professional services to patients. The AOA will continue to oppose attempts by CMS and NSC to subject more ODs than necessary to the surety bond requirement.

The AOA does not recommend optometrists obtain a surety bond. Instead, the AOA suggests that members revise their practice procedures, if necessary, to avoid being subject to the surety bond requirements. A practice that obtains a surety bond might then be required to become accredited – even though physicians are also currently exempt from accreditation – if CMS believes the practice can be labeled a medical supply company. The AOA expects increased regulatory oversight of medical supply companies will further deter optometrists from providing this valuable and important service to Medicare beneficiaries if CMS continues to treat optometrist suppliers as if they are medical supply companies.

If CMS does not change its position, then the AOA recommends members revise their practice arrangements to ensure that they perform “some sort of examination or test” for Medicare beneficiaries whose first interaction with the practice is to obtain prescription eyeglasses following cataract surgery. CMS has stipulated that an examination or test must occur prior to dispensing eyeglasses for the beneficiary to be considered a patient of the optometrist. It is AOA’s understanding that such a test or examination need not be billed to Medicare, particularly given the restrictions for billing during the surgical global period. Instead, the practice should make sure it is doing something to establish the doctor-patient relationship in the eyes of CMS so that the physician exemption applies before the glasses are provided. For example, a visual acuity test of the prescription in a trial frame could be done before dispensing the covered eyeglasses. Another option could be to verify the original prescription using auto-refraction. The optometrist should be sure to create a chart for the patient and record the data from the test or examination along with other information appropriate for a medical record.

An optometrist could also choose to avoid a surety bond by not filling prescriptions for Medicare beneficiaries written by another physician. Note that the only patients in question are Medicare patients. The surety bond is not triggered when an optometrist supplies eyeglasses to non-Medicare patients. That is, the surety bond requirement might be necessary only when the practice is providing covered eyeglasses to Medicare beneficiaries who are not patients as defined by CMS. Nevertheless, it might be easier for an office to follow the same delivery procedures for Medicare and non-Medicare patients.