CMS Issues New Question and Answer Regarding Optical Dispensaries and Surety Bonds – September 10, 2009

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Just when we all thought we understood whether physician owned optical dispensaries were subject to the Surety Bond regulations, we find CMS has taken the **narrower exception** than the AAO originally thought applied. This information makes the decision of whether you need a Surety Bond very clear and is updated from what you previously received.

> **46. How does an optometrist or ophthalmologist who dispenses eyeglasses qualify for the physician exemptions?**
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> 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.**
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> 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:
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> (1) **the shop and the physician's practice are under/within the same TIN and business structure (e.g., part of the same corporation)**, and
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> (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.

Physicians need to review this updated information to make a decision whether they want to apply for a Surety Bond which would allow your optical dispensary to continue to fill all prescriptions for Medicare Covered Optical Items OR not apply for a Surety Bond and refuse to fill any prescription that was issued by another physician without an examination or test being furnished by your practice.

If you will be filling other physicians' prescriptions for Medicare covered optical items, your Surety Bond should be in effect by October 2, 2009.

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:
    - The amount of any unpaid claim, plus accrued interest, for which the DMEPOS supplier is responsible
    - 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.

To obtain a surety bond, CMS recommends contacting one of the sureties identified on the U.S. Department of Treasury's "Listing of Certified (Surety Bond) Companies." The website 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 only at an elevated cost.

CMS estimates that the average annual bond cost is approximately 3 percent of the value of the bond. Thus, the annual cost to the supplier for a $50,000 bond will be around $1,500, though CMS stresses that this figure could vary by surety.

Don't forget if you have more than one optical dispensary and want to fill prescriptions for Medicare covered optical items, you must have a Surety Bond for each location.