

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**SURETY BONDS REMAIN AN
UNDERUTILIZED TOOL TO
PROTECT MEDICARE FROM
SUPPLIER OVERPAYMENTS**



**Daniel R. Levinson
Inspector General**

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EXECUTIVE SUMMARY: SURETY BONDS REMAIN AN UNDERUTILIZED TOOL TO PROTECT MEDICARE FROM SUPPLIER OVERPAYMENTS

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WHY WE DID THIS STUDY

In 2009, the Centers for Medicare & Medicaid Services (CMS) began to require suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) to obtain a minimum of \$50,000 in surety bond coverage per location. A surety bond is issued by an entity (the surety) guaranteeing that the surety will pay CMS the amount of any monetary obligations incurred during the term of the bond, and for which the supplier is responsible, up to the surety's maximum obligation. Surety bonds can discourage enrollment of fraudulent suppliers and aid the recovery of debts owed to Medicare. We set out to determine the extent to which CMS maintains complete and accurate surety bond data and to determine the amount of supplier debt that could have been recovered through surety bonds.

HOW WE DID THIS STUDY

We requested from CMS information on all outstanding overpayments that were identified for collection between October 2, 2009, and April 1, 2011. We also requested information regarding suppliers' surety bond coverage and requested CMS's written procedures for recovering DMEPOS overpayments through surety bonds.

WHAT WE FOUND

Two years after the surety bond requirement was implemented, CMS did not have accurate surety bond information for all suppliers. Information for thousands of bonded suppliers was missing, and surety bond amounts were not consistently maintained by supplier location. Bonded suppliers have tens of millions in uncollected overpayments. As of July 2012, CMS reported it collected \$263,000 from the millions in overpayments eligible for surety bond recovery. Most of these overpayments will likely remain uncollected because a number of suppliers had overpayments of more than \$50,000, and CMS can recover only up to the amount of the surety bond.

WHAT WE RECOMMEND

We recommend that CMS: (1) improve oversight of supplier data to ensure accurate and consistent information, (2) immediately begin utilizing the surety bond requirement to recover outstanding overpayments from suppliers' surety bonds, (3) consider using the legislative authority given by the Patient Protection and Affordable Care Act of 2010 to require increased surety bond amounts for suppliers that receive high overall Medicare payments, and (4) revise collection guidelines to state that collection of debts through surety bonds is based on dates of service. CMS concurred with all four recommendations.

TABLE OF CONTENTS

Objectives	1
Background	1
Methodology	7
Findings.....	11
Two years after the surety bond requirement was implemented, CMS did not have complete or accurate surety bond information for all suppliers	11
CMS has yet to recover millions of dollars in supplier debt.....	12
Conclusion and Recommendations.....	15
Agency Comments and Office of Inspector General Response.....	18
Appendix A: Agency Comments	20
Acknowledgments.....	23

OBJECTIVES

To determine:

1. the extent to which the Centers for Medicare & Medicaid Services (CMS) maintains complete and accurate surety bond information for suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), and
2. the number of DMEPOS suppliers with overpayment debt, the extent to which these suppliers had surety bond coverage, and the amount of overpayment debt that could have been recovered through surety bonds from October 2009 to April 2011.

BACKGROUND

Historically, Medicare Part B DMEPOS have been highly vulnerable to fraud and abuse. As early as 1997, the Office of Inspector General (OIG) reported that 1 of every 14 DMEPOS suppliers (suppliers) and 1 of every 9 new applicants did not have a required physical address.¹ Additionally, 41 percent of suppliers failed to meet at least one supplier standard, such as those related to warranties, information for customers, and inventories. A 2005 Government Accountability Office (GAO) report concluded that Medicare's standards for screening suppliers for enrollment were insufficient to prevent illegitimate businesses from enrolling in Medicare.² In 2007 and 2008, OIG conducted unannounced site visits in South Florida and Los Angeles and found that some suppliers visited were not in compliance with basic supplier standards, providing further evidence of the insufficiency of supplier enrollment standards.³

CMS has taken steps to improve the supplier enrollment process. For example, CMS has implemented new accreditation and supplier enrollment standards and now requires certain types of suppliers to obtain surety bonds.⁴ A surety bond is a bond issued by an entity (the surety) guaranteeing that a supplier will fulfill an obligation or series of obligations to Medicare. If the obligation is not met, the surety covers losses up to the bond amount.

¹ OIG, *Medical Equipment Suppliers: Assuring Legitimacy*, OEI-04-96-00240, December 1997.

² GAO, *More Effective Screening and Stronger Enrollment Standards Needed for Medical Equipment Suppliers*, GAO-05-656, September 2005.

³ OIG, *South Florida Suppliers' Compliance with Medicare Standards: Results from Unannounced Visits*, OEI-03-07-00150, March 2007; OIG, *Los Angeles County Suppliers' Compliance With Medicare Standards: Results From Unannounced Site Visits*, OEI-09-07-00550, February 2008.

⁴ 42 CFR §§ 424.57(c)(22), 424.57(c)(24), and 424.57(c)(26).

Specifically, the surety bond guarantees that the surety will pay CMS the amount (including accrued interest) of any overpayments, civil monetary penalties, or assessments incurred during the term of the bond and for which the supplier is responsible, up to the surety's maximum obligation.⁵

Surety Bonds for DMEPOS Suppliers

Section 4312(a) of the Balanced Budget Act of 1997, P.L. 105-33, 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. CMS promulgated a final rule on January 2, 2009, requiring certain DMEPOS suppliers to "furnish CMS with a surety bond."⁶ The final rule became effective on March 3, 2009. New suppliers were required to obtain a surety bond by May 4, 2009, while enrolled suppliers had until October 2, 2009, to obtain a surety bond.⁷

According to the final rule, the purpose of the surety bond requirement is to (1) limit Medicare's risk from fraudulent suppliers; (2) enhance the enrollment process to ensure that only legitimate suppliers are enrolled or remain enrolled; (3) ensure recovery of erroneous payments resulting from fraudulent billing practices; and (4) ensure that beneficiaries receive products and services that are reasonable and necessary from legitimate suppliers.⁸

The final rule provides exemptions from the surety bond requirement for the following types of suppliers:

- government-operated suppliers (if the 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 (if the business is solely owned and operated by the orthotic and prosthetic personnel, and if the business is billing only for orthotics, prosthetics, and supplies);
- physicians and nonphysician practitioners (if the items are furnished only to the physician or nonphysician practitioner's own patients as part of the service); and
- physical and occupational therapists in private practice (if the business is solely owned and operated by the physical or occupational therapist, items are furnished only to the therapist's own patients as part of the

⁵ 42 CFR § 424.57(d)(5).

⁶ 74 Fed. Reg. 166–167 (Jan. 2, 2009).

⁷ 42 CFR § 424.57(d)(1).

⁸ 74 Fed. Reg. 166–167 (Jan. 2, 2009).

service, and the business is billing only for orthotics, prosthetics, and supplies).⁹

All nonexempt suppliers are required to obtain a surety bond from an authorized surety.¹⁰ CMS requires nonexempt suppliers to provide surety bond information and documentation upon enrollment. The supplier must submit a copy of the original surety bond with the enrollment application.¹¹

The surety bond must be in the amount of at least \$50,000 for each assigned National Provider Identifier (NPI) for which the supplier is seeking to acquire Medicare billing privileges.¹² A supplier with multiple practice locations must secure a surety bond for each location.¹³ A supplier has the option of obtaining a single surety bond that encompasses all of its practice locations.¹⁴

Suppliers against which final adverse actions have been taken are considered to pose a higher than average risk to the program and must obtain an elevated surety bond, at a rate of an additional \$50,000 for each final adverse action imposed against them.¹⁵ For example, if a supplier's billing privileges had been revoked or suspended in the preceding 10 years, the supplier would need to secure an elevated surety bond in the amount of \$100,000 (i.e., the base amount of \$50,000 plus an additional \$50,000 because of the final adverse action).

Provisions in the Patient Protection and Affordable Care Act of 2010 also give the Secretary of Health and Human Services the authority to increase

⁹ 42 CFR § 424.57(d)(15)(i).

¹⁰ 42 CFR § 424.57(d)(2). As defined at 42 CFR 424.57(a), the term "authorized surety" means a surety that has been issued a Certificate of Authority by the U.S. Department of the Treasury as an acceptable surety on Federal bonds and the certificate has neither expired nor been revoked.

¹¹ 42 CFR § 424.57(d)(2) and (d)(4); CMS, *Medicare Program Integrity Manual*, Pub. No. 100-08, ch. 10, § 21.7(A)(2).

¹² 42 CFR § 424.57(d)(2).

¹³ CMS, *Medicare Program Integrity Manual*, Pub. No. 100-08, ch. 10, § 21.7(A)(3). Suppliers generally pay a fee of approximately \$1,500 (or 3 percent of the value of a \$50,000 bond) to obtain a bond.

¹⁴ CMS, *Medicare Program Integrity Manual*, Pub. No. 100-08, ch. 10, § 21.7(A)(3).

¹⁵ 42 CFR §§ 424.57(a) and (d)(3); CMS, *Medicare Program Integrity Manual*, Pub. No. 100-08, ch. 10, § 21.7(A)(3). An adverse legal action includes a Medicare-imposed revocation of any Medicare billing number; revocation or suspension of a license to provide health care by any State licensing authority; revocation for failure to meet quality standards; a conviction of a Federal or State felony offense 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.

surety bond requirements for suppliers on the basis of the company's billing volume.¹⁶

CMS Contractors

Two types of contractors have responsibilities with regard to suppliers: durable medical equipment Medicare administrative contractors (DME MAC) process DMEPOS claims, and the National Supplier Clearinghouse (NSC) oversees supplier enrollment.

DME MACs. DME MACs are responsible for processing DMEPOS claims and determining whether those claims are complete and should be paid. In certain instances, improper payments are made to providers, suppliers, or beneficiaries, resulting in underpayments or overpayments. If a DME MAC makes a final determination of an overpayment, it must follow specific procedures when recovering, reporting, and referring overpayments.¹⁷ On a monthly basis, DME MACs must submit to CMS a detailed report of all outstanding overpayments and all actions occurring for any overpayment in the preceding month.¹⁸

NSC. NSC is responsible for overseeing Medicare supplier enrollment. NSC processes all new supplier applications for billing numbers and ensures that enrolled suppliers meet established standards.¹⁹ Before granting billing privileges, NSC may conduct an unannounced site visit to determine whether a supplier meets all Medicare supplier standards. NSC is required to perform unannounced site visits for moderate- and high-risk suppliers, but may also conduct unannounced site visits to any supplier. If NSC finds after a site visit that a supplier no longer meets the supplier standards, NSC has the authority to revoke the supplier's billing privileges.²⁰ Suppliers' billing privileges also may become inactive. This can happen for a number of reasons, such as voluntary inactivation or failure to submit claims for four consecutive quarters.

Additionally, NSC issues letters to suppliers that require elevated surety bond amounts and revocation letters to suppliers that lack required surety bonds. NSC also provides CMS with data on the status of suppliers' surety bonds and of their accreditation.

¹⁶ The Patient Protection and Affordable Care Act, P.L. 111-148 § 6402(g) (amending Social Security Act, § 1834(a)(16)(B)).

¹⁷ CMS, *Durable Medical Equipment Medicare Administrative Contractor: Attachment J-01—Statement of Work Procurement of DME MAC Jurisdictions A & B*, §§ 5.4 and 5.5.

¹⁸ *Ibid.*, § 5.3, p. 55.

¹⁹ CMS, *National Supplier Clearinghouse Medicare Administrative Contractor Statement of Work*, §§ I.A., I.B., and II.1.14.

²⁰ 42 CFR §§ 424.57(c)(8), 424.517, and 424.518; 76 Fed. Reg. 5862, 5866 (Feb. 2, 2011).

Prior to October 2010, NSC used the Provider Information Management System (PIMS) to store and maintain supplier information. However, in October 2010, NSC transferred supplier information from PIMS to the Provider Enrollment, Chain, and Ownership System (PECOS), so supplier information is now stored in PECOS. PECOS is the repository for all collected and verified health care provider enrollment information, including surety bond information, and provides a single national enrollment record for each provider or supplier.

Overpayment Recovery Through Surety Bonds

In January 2012, CMS finalized its procedures for recovering, through surety bonds, overpayments made to suppliers. These procedures became effective on February 21, 2012. According to these procedures, DME MACs can make a claim against a surety for the recovery of overpayments related to payments made on or after March 3, 2009.²¹

Debt Collection Procedures. The procedures for collection on surety bonds incorporate the existing collection procedures for all providers in the *Medicare Financial Management Manual*.²² Under these procedures, once the DME MAC makes a final determination on an overpayment, a first demand letter is sent to the supplier (for overpayments of \$10 or more). The first demand letter requests that the supplier refund the overpaid amount, informs the supplier how the DME MAC will recover the overpayment if repayment is not made, explains when interest will begin to accrue, and informs the supplier of the right to request a review or hearing. If the overpayment is not paid in full by the 30th day after the first demand letter is sent to the supplier, interest begins to accrue on the 31st day.²³

Once 101 days have passed since the initial demand letter was sent and no payment or partial payment has been received, the DME MAC must attempt to recover the overpayment through the surety bond.²⁴ The DME MAC notifies the surety by letter that the amount of the overpayment (plus any accrued interest) must be paid to CMS within 30 days. The DME MAC can seek repayment only up to the total sum of the surety bond (i.e., \$50,000 for most suppliers).²⁵

If the surety does not pay the amount of the overpayment within 30 days, the overpayment becomes eligible for debt referral to the Department of the

²¹ CMS, *Medicare Program Integrity Manual*, Pub. No. 100-08, ch. 15, § 15.21.7.1.

²² CMS, *Medicare Program Integrity Manual*, Pub. No. 100-08, ch. 15, § 15.21.7.1(A)(2).

²³ CMS, *Medicare Financial Management Manual*, Pub. No. 100-06, ch. 4, § 90.2.

²⁴ CMS, *Medicare Program Integrity Manual*, Pub. No. 100-08, ch. 15, § 15.21.7.1(A)(2).

²⁵ Ibid.

Treasury.²⁶ Once the overpayment debt has been referred and accepted, DME MACs terminate active collection efforts.²⁷

Related OIG Studies

As stated previously, in 1997 OIG reported that 1 of every 14 suppliers and 1 of every 9 new applicants did not have a required physical address.²⁸

Additionally, 41 percent of suppliers failed to meet at least one supplier standard, such as those related to warranties, information for customers, and inventories. The report noted that the ease and low expense of acquiring a supplier number facilitated the entry of abusers into Medicare.

In 2006, OIG conducted unannounced site visits of 1,581 suppliers in three South Florida counties and found that 31 percent did not maintain physical facilities or were not open and staffed, contrary to Medicare requirements.²⁹

In a subsequent report, OIG found that nearly half of 491 South Florida suppliers whose billing privileges had been revoked appealed and received hearings and that hearing officers reinstated the billing privileges of 91 percent of these suppliers.³⁰ However, two-thirds of the suppliers whose billing privileges were reinstated had subsequently had these privileges revoked or inactivated, and some individuals connected to suppliers with reinstated billing privileges had been indicted.

In 2007, OIG conducted unannounced site visits of suppliers in Los Angeles County and found that 13 percent of the 905 suppliers visited did not maintain a physical facility or were not open and that an additional 9 percent did not meet additional standards.³¹

In a May 2010 report, OIG determined the collection status, as of June 2008, of overpayments—identified by program safeguard contractors—that had been made to South Florida suppliers and referred to claims processors for collection in 2007. OIG found that the collection rate of those overpayments was only 1 percent, compared to a national DMEPOS collection rate of 3 percent.³² Additionally, the report found that Medicare

²⁶ CMS, *Medicare Program Integrity Manual*, Pub. No. 100-08, ch. 15, § 15.21.7.1(A)(2). Debts ineligible for referral include those in bankruptcy status, in an appeal status, under a fraud and abuse investigation, or for which the debtor is deceased.

²⁷ CMS, *Medicare Financial Management Manual*, Pub. No. 100-06, ch. 4, § 80.2.

²⁸ OIG, *Medical Equipment Suppliers: Assuring Legitimacy*, OEI-04-96-00240, December 1997.

²⁹ OIG, *South Florida Suppliers' Compliance with Medicare Standards: Results From Unannounced Visits*, OEI-03-07-00150, March 2007.

³⁰ OIG, *South Florida Durable Medical Equipment Suppliers: Results of Appeals*, OEI-03-07-00540, October 2008.

³¹ OIG, *Los Angeles County Suppliers' Compliance with Medicare Standards: Results From Unannounced Site Visits*, OEI-09-07-00550, February 2008.

³² OIG, *Collection Rate for Overpayments Made to Medicare Suppliers in South Florida*, OEI-03-09-00570, May 2010.

could have recovered an additional \$15 million, or 6 percent, of South Florida DMEPOS overpayment dollars if the surety bond requirement had been in place at the time of the study.

In September 2011, OIG issued an early alert memorandum report detailing the early findings of the current study.³³ OIG found that CMS had not finalized procedures for recovering DMEPOS overpayments through surety bonds.³⁴ In addition, as of July 2011, no overpayments had been recovered through surety bonds since October 2, 2009, the date the surety bond requirement became effective for all suppliers.

METHODOLOGY

Scope

Our study focused on nonexempt suppliers with overpayments identified between October 2, 2009—the date that all nonexempt suppliers were required to have a surety bond—and April 1, 2011. These overpayments were still outstanding as of August 31, 2011.

Data Collection

In August 2011, we requested from CMS information on overpayments made to all bonded suppliers. Specifically, we requested information on currently outstanding overpayments made to bonded suppliers that were identified for collection between October 2, 2009, and April 1, 2011 (i.e., an initial demand letter had been sent to the supplier during that timeframe).

We defined an outstanding overpayment as the total supplier-owed principal amount of all overpayments not under appeal, minus any adjustments, reductions, or partial payments, for which the supplier was not in active repayment status. We requested the total outstanding overpayment amount, plus accrued interest, for each bonded supplier and supplier location. We requested each supplier's billing status as of August 31, 2011.

In addition to the total overpayment amounts for each bonded supplier, we requested the amount of surety bond coverage for each separate supplier location.

In response to our data request, CMS stated that it would be difficult to provide the surety bond information for the specific suppliers with outstanding overpayments because overpayment data and surety bond data are maintained in different database systems. Instead, CMS provided overpayment data from its DME MACs for all suppliers (both exempt and

³³ OIG, *Use of Surety Bonds to Recover Overpayments Made to Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies: Early Findings*, OEI-03-11-00351, September 2011.

³⁴ CMS subsequently finalized these procedures in January 2012.

nonexempt) with outstanding overpayments identified between October 2, 2009, and April 1, 2011. CMS provided us with this information at the end of September 2011.

Separately, CMS provided surety bond information for all suppliers who were bonded between October 2, 2009, and April 1, 2011. However, OIG identified problems with these data, which caused CMS to have multiple delays in providing updated data to OIG. The final data related to suppliers' surety bonds was not received until July 2012.

Data Analysis

Overpayment Data. DME MACs provided to OIG information for a total of 3,111 suppliers with outstanding overpayments. Because suppliers can bill multiple DME MACs (depending on the beneficiary address), some suppliers appeared in more than one DME MAC's overpayment information. We combined all overpayments for these suppliers to determine the overpayment amount for each unique supplier NPI. To do this, we verified that each supplier's NPI, name, address, and billing status were consistent across contractors. We determined that a total of 2,927 unique suppliers had outstanding overpayments identified between October 2, 2009, and April 1, 2011.

From the overpayment data set, we excluded suppliers that had an overpayment amount of less than \$10.³⁵ We also excluded suppliers with billing privileges that were inactive or revoked before October 2, 2009, because they would not be subject to the surety bond requirement. Additionally, we excluded suppliers that CMS reported as exempt or that we determined were likely to be exempt from the surety bond requirement. To determine which suppliers were likely to be exempt, we used the primary specialty code provided by CMS for each nonbonded supplier.³⁶ The total number of suppliers with outstanding overpayments meeting our inclusion criteria was 1,429.

³⁵ DME MACs do not send a demand letter unless the overpayment is \$10 or more (CMS, *Medicare Financial Management Manual*, Pub. No. 100-06, ch. 4, § 90.2); however, there were a number of identified overpayments in the data set provided by CMS that were under \$10.

³⁶ We considered suppliers with any of the following primary specialty codes to be exempt from the surety bond requirement: physician, physical therapist, medical supply company with orthotic personnel, medical supply company with prosthetic personnel, prosthetic personnel, orthotic personnel, and optician. Suppliers we considered nonexempt included those with the following primary specialty codes: medical supply company, medical supply company with respiratory therapist, home health agency, nursing facility, and pharmacy. We excluded two additional suppliers that did not have specialty codes and had inactive billing privileges but did not have status dates (i.e., we could not determine when they became inactive).

Surety Bond Data. In October 2011, CMS provided information for 54,695 suppliers that had surety bonds between October 2, 2009, and April 1, 2011. Because we found discrepancies and inconsistencies within this information, we asked CMS to verify it. In December 2011, CMS resubmitted to OIG surety bond information for 82,458 suppliers that had surety bonds between October 2, 2009, and April 1, 2011. From this data set, we combined suppliers with matching NPIs, resulting in a total of 77,898 suppliers.

Merged Overpayment and Surety Bond Data. To determine how many of the 1,429 suppliers with outstanding overpayments also had surety bonds, we matched these suppliers' NPIs with those of the 77,898 suppliers with surety bonds.³⁷ We determined that 1,117 suppliers had surety bonds.

For each of the 1,117 suppliers, we calculated the total amount of outstanding debt (overpayment principal plus accrued interest) and the amount that could have been recovered from surety bonds. From our review of the surety bond data for all 77,898 bonded suppliers, we determined that the surety bond information was not always reported by practice location. Because we could not determine whether records showing surety bond amounts greater than \$50,000 reflected elevated bonds (for high-risk suppliers) or were data errors, we calculated possible recovery amounts for each supplier based on a bond amount of \$50,000, resulting in a conservative estimate. For the suppliers that owed less than \$50,000, we used the amount owed as the amount that CMS could have recovered. For suppliers that owed \$50,000 or more, we used \$50,000 as the amount CMS could have recovered.

We also calculated the total amount of debts for the remaining 312 suppliers that lacked surety bonds.

Limitations

The DME MACs provided suppliers' aggregated overpayment amounts identified between October 2, 2009, and April 1, 2011. We did not validate any of the overpayment data provided by the DME MACs. Because we do not have information on the dates of individual overpayments, it is possible that some individual overpayments may have been from dates of service prior to surety bond coverage, which would make them ineligible for collection through surety bonds.

³⁷ For suppliers missing an NPI in the overpayment data set, we used the supplier name and address to determine whether a match existed in the surety bond data set.

Standards

This study was conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

FINDINGS

Two years after the surety bond requirement was implemented, CMS did not have complete or accurate surety bond information for all suppliers

Although surety bond coverage has been one of the requirements of supplier enrollment since March 2009, CMS lacked complete or accurate surety bond information for all suppliers as of October 2011. Information for thousands of bonded suppliers was missing, and surety bond amounts were not consistently maintained in PECOS by supplier location.

Surety bond data for over 27,000 suppliers were missing from CMS's provider data system

In October 2011, CMS provided OIG with surety bond information for 54,695 suppliers, which was extracted from PECOS, the current provider data system. However, a comparison of these suppliers to the CMS-provided list of suppliers with overpayments resulted in very few matches. In November 2011, at our request, CMS reviewed the data and discovered that information for a large number of suppliers was missing from PECOS. CMS determined that errors had occurred during the October 2010 transition of supplier data from the previous data system—PIMS—to the current data system, PECOS. As a result, data for 27,763 suppliers had not been transferred from PIMS to PECOS and were thus missing from the initial data received. After discovering this error—2 years after suppliers were required to have bonds—CMS provided OIG with an updated surety bond data set in December 2011 containing 82,458 suppliers.

CMS did not consistently maintain surety bond amounts by supplier practice location in PECOS, making it difficult to determine whether suppliers complied with the surety bond requirement

Suppliers are allowed to obtain one bond to cover multiple practice locations, but each location must have at least \$50,000 in coverage. Therefore, a supplier with 10 locations can obtain a single bond in the amount of \$500,000 (i.e., \$50,000 in coverage for each location).

According to the surety bond data that CMS provided, 35 percent of the 77,898 supplier locations had surety bond coverage greatly exceeding \$50,000 (i.e., bonds over \$500,000 per location). Some of these appeared to be cases in which multiple supplier locations were covered under one large bond, but only the overall bond amount—not the *location* coverage amount—was reported for each location. For example, one supplier had six

locations, with a surety bond amount reported as \$300,000 for each location. Because \$300,000 divided by the six locations equals \$50,000 in coverage per location, it is likely that this supplier had one \$300,000 bond that covered all six locations for \$50,000 each.

In other cases, the surety bond coverage for specific locations could not be determined. For example, CMS reported that one supplier had 12 locations, each with surety bond coverage reported as \$20 million. Even if this were the overall coverage amount, the coverage amount per location would have been approximately \$1.7 million.

Although suppliers are required to have a higher bond amount if they meet the criteria for having any adverse legal actions imposed against them, CMS staff stated that few suppliers meet this criteria. Therefore, it is likely that bond amounts that greatly exceed \$50,000 per supplier location were not accurately listed in CMS's database.

CMS can recover debts only up to the amount of the surety bond coverage for a particular supplier location. Given the inconsistencies mentioned, it would be difficult for CMS to determine from the PECOS data whether a supplier with multiple locations covered under one bond was required to have elevated bonds for any of its locations. According to CMS, if a supplier with multiple locations is required to obtain elevated bond coverage for one location but not the others, a manual search of enrollment records would have to be performed to determine which location has the elevated bond coverage.

CMS has yet to recover millions of dollars in supplier debt

We calculated the total debts owed by suppliers using the date that overpayments were identified. From the data provided by CMS, we found 1,429 suppliers with outstanding overpayments identified between October 2, 2009, and April 1, 2011. As shown in Table 1, these 1,429 suppliers owed \$70 million to Medicare as of August 31, 2011. We calculated that \$50 million of this debt is owed by 1,117 suppliers that had surety bonds. In addition, we calculated that another \$20 million is owed by 312 suppliers without bonds.

CMS did not finalize its guidelines to contractors for the collection of debts through surety bonds until January 2012, more than 2 years after the surety bond requirement was implemented. CMS staff stated that significant personnel changes delayed the finalization of these guidelines. These guidelines specify that recovery through surety bonds applies only to overpayments with payment dates made on or after March 3, 2009.

Table 1: Medicare Debts Owed by Suppliers as of August 31, 2011

Surety Bond Coverage	Number of Suppliers	Percentage of Suppliers With Debts	Total Medicare Debt
Bonded Suppliers	1,117	78.2%	\$50,090,879
Suppliers Without Surety Bonds	312	21.8%	\$20,395,517
<i>Suppliers With Billing Privileges Revoked or Inactivated Between 10/3/09 and 12/31/09</i>	289		
<i>Suppliers With Billing Privileges Revoked or Inactivated After 12/31/09</i>	22		
<i>Nonexempt Suppliers Without Surety Bonds</i>	1		
Total	1,429	100%	\$70,486,396

Source: OIG analysis of overpayment and surety bond data

In its comments on the draft report, CMS recalculated the debt owed by bonded suppliers using data that included only overpayments with *dates of service* on or after March 3, 2009. Using dates of service to determine eligible overpayments, CMS found that 1,190 bonded suppliers had a total Medicare debt of \$32 million—a difference of \$18 million from our calculation. The use of dates of service to calculate the debt is not consistent with CMS’s January 2012 guidelines that apply only to overpayments with *payment dates* of March 3, 2009 or after. Because a payment can be made months after the date of service, calculations based on dates of service versus dates of payment may differ. Although CMS’s calculations show that \$18 million of the total debt calculated by OIG may not be eligible for recovery through surety bonds, this amount would remain an outstanding debt to Medicare.

Millions of dollars continue to be owed by suppliers. In its comments on the draft report, CMS reported that as of July 2012, it has recovered \$263,000 of the millions in overpayments that it determined were eligible for recovery from surety companies.

With a surety bond amount of \$50,000, CMS cannot recover all of the overpayments owed by bonded suppliers. Based on our analysis, each of the 1,117 bonded suppliers had at least \$50,000 in coverage. Because CMS is able to recover only up to the amount of the surety bond, most (\$42 million) of the \$50 million owed by bonded suppliers will likely

remain uncollected. Ninety-eight suppliers in our analysis had overpayments of more than \$50,000; 80 percent of these suppliers owed more than \$100,000, and 27 percent owed more than \$500,000. One supplier had a total debt of \$5 million. For these suppliers, a surety bond of \$50,000 would recover only a very small percentage of their debt.³⁸

Over \$20 million in debt is owed by suppliers without surety bonds; the majority of these suppliers had their billing privileges revoked or inactivated within 3 months after the surety bond requirement date. Of the 1,429 suppliers with debts, 312 suppliers did not have surety bonds. As shown in Table 1, these nonbonded suppliers owed \$20 million. Most of these suppliers (289) had their billing privileges revoked or inactivated between October 3, 2009, and December 31, 2009. CMS reported that it did not immediately revoke the billing privileges of suppliers that did not have a surety bond by the October 2, 2009, deadline because it needed several weeks to confirm whether suppliers had bonds. Because these 312 suppliers did not obtain surety bonds and are no longer actively billing, it is unlikely that their debts will be recovered.

³⁸ As discussed in the methodology, the overpayments owed by suppliers were identified between October 2, 2009, and April 1, 2011. It is possible that some overpayments identified may not have been for dates of service covered during the term of the bond and, therefore, would not be eligible for collection through the bond.

CONCLUSION AND RECOMMENDATIONS

Fraud and abuse among DMEPOS suppliers is not a recent challenge for Medicare; the problem of suppliers enrolling in Medicare and billing millions of dollars in fraudulent claims has been well documented for years. Although CMS has made changes to strengthen the enrollment process, including implementing the surety bond requirement, millions of dollars continue to be at risk.

Section 4312(a) of the Balanced Budget Act of 1997 requires certain suppliers to obtain a surety bond as a condition of Medicare enrollment. The surety bond requirement is a program integrity tool that is intended to safeguard the enrollment process by discouraging fraudulent providers from enrolling and by providing an additional method to recover debts. However, multiple inaccuracies and inconsistencies within CMS's surety bond data raise concerns regarding CMS's ability to promptly and effectively recover debts from surety bonds. Specifically, surety bond amounts for some supplier locations could not be determined because overall bond amounts were reported instead of per-location amounts. Because CMS can recover debts only up to the bond amount, CMS would have difficulty determining the maximum amount that could be recovered from bonds without knowing the coverage amounts for specific supplier locations.

The findings in this report also raise concerns about the accuracy of surety bond information in CMS's PECOS database. A significant number of suppliers were originally missing from PECOS, an error CMS discovered during data collection for this report 2 years after the surety bond requirement was implemented.

Between October 2, 2009, and April 1, 2011, CMS's contractors identified millions in overpayments paid to bonded suppliers. However, as of August 2011, CMS had yet to utilize the surety bond requirement to recover these overpayments. Furthermore, a number of suppliers had overpayments much greater than the \$50,000 minimum amount for a surety bond; therefore, only a small percentage of these suppliers' overpayments could be recovered under current surety bond requirements.

As of July 2012, CMS reported that they had collected from supplier surety bonds only \$263,000 of the millions identified for surety bond recovery. While the OIG and CMS total debt calculations differ, it is clear that tens of millions of dollars in debt remain uncollected from suppliers.

By utilizing surety bonds as a program integrity tool, CMS has the potential to recover millions of dollars in overpayments from suppliers.

To ensure that it is maximizing the effectiveness of this program integrity tool, we recommend that CMS:

Improve Oversight of Supplier Data to Ensure Accurate and Consistent Information

To efficiently recover debts through surety bonds, CMS needs to ensure (on an ongoing basis) that supplier information maintained in PECOS is accurate, consistent, and accessible. CMS should add new data fields and expand the data functions within PECOS specifically for supplier information. Edits (i.e., data system processes to ensure proper payment of claims) should be established for certain fields to prevent clerical errors. For example, surety bonds in the amounts of \$5,000 or \$500,000,000 for a single location should be flagged as potential typographical errors for the typical surety bond amount of \$50,000. CMS should also create data fields so that both per-location and overall surety bond amounts are available. This will increase efficiency by allowing CMS to quickly obtain the surety bond amount per location, eliminating the need for manual searches, and providing an additional accuracy check.

Additionally, because of the systemic issues and data errors revealed throughout our study, CMS should review all surety bond data in PECOS to identify other discrepancies or errors resulting from the transition from PIMS to PECOS.

Immediately Begin Utilizing Surety Bonds to Recover Debts From Bonded Suppliers

More than 2 years have passed since the surety bond requirement was implemented, yet CMS has not comprehensively used this valuable program integrity tool to recover the millions of dollars owed by suppliers. CMS should immediately begin making claims against sureties for all bonded suppliers with outstanding debts.

Consider Using the Legislative Authority Given by the Patient Protection and Affordable Care Act of 2010 To Require Increased Surety Bonds Based on Suppliers' Billing Volume

With a surety bond amount of \$50,000, \$42 million of the \$50 million in total debt owed by bonded suppliers may remain uncollected because a number of suppliers had outstanding overpayments much greater than \$50,000. Provisions in the Patient Protection and Affordable Care Act give the Secretary of Health and Human Services the authority to increase surety bond amounts for suppliers based on the billing volume of the company. To provide CMS with the ability to recoup a higher percentage of overpayments made to suppliers, CMS should consider increasing

surety bond amounts above \$50,000 for suppliers with high overall Medicare payments.

Revise Collection Guidelines to State That Collection of Debts Through Surety Bonds is Based on Dates of Service

The collection guidelines, which were finalized in January 2012, state that a surety is liable for overpayments related to payments made on or after March 3, 2009. However, in calculating the total debt owed by bonded suppliers in response to the OIG draft report, CMS used overpayments related to claims with dates of service—not payment dates—after March 2009. Therefore, we recommend that CMS revise the collection guidelines to state that a surety is liable for overpayments related to payments made for claims with dates of service on or after March 3, 2009.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

CMS concurred with all four of the report recommendations but disagreed with OIG's conclusions.

Regarding the first recommendation, CMS agreed that there are opportunities for improvement in how surety bond information is captured within PECOS. CMS stated that it will be implementing enhancements to PECOS in 2013 to increase accuracy and tracking of surety bond information.

CMS concurred with our second recommendation and has begun collecting overpayments from bonded suppliers. As of July 2012, CMS collected approximately \$263,000 from supplier surety bonds. CMS stated that the DME MACs are continuing to make requests for payments from sureties; therefore, it expects more overpayments to be collected as a result.

CMS concurred with our third recommendation. CMS is considering issues and options related to a requirement that the DMEPOS surety bond be commensurate with the volume of a supplier's billing. CMS also is considering the possibility of requiring home health agencies and certain other provider and supplier types to obtain and maintain surety bonds as a condition of enrollment.

CMS concurred with our fourth recommendation and will revise the guidelines so they state that surety bond collection is based on the date the service was provided.

In its comments to this report, CMS disagreed with OIG's conclusion that bonded suppliers had overpayments of \$50 million. CMS stated that it re-analyzed the data and calculated an overpayment amount of \$32 million, not the \$50 million calculated by OIG—a difference of \$18 million. CMS calculated overpayments using the same criteria as OIG, with the exception of excluding overpayments based on claims with dates of service prior to March 2009.

Because the data provided by CMS did not include payment or service dates for individual overpayments, OIG agrees that it is possible that some of the overpayments identified by OIG may relate to claims with dates of service prior to March 2009, making them ineligible for collection through surety bonds. OIG stated this methodological limitation in the draft report to CMS. Additionally, when OIG began data collection, CMS had yet to finalize its guidelines for surety bond collection. While OIG recognizes that \$18 million may not be recovered through surety bonds based on

CMS's guidelines for surety bond collection that were finalized in January 2012, the \$18 million would remain an outstanding debt to Medicare.

As a result of this study, OIG identified significant problems with surety bond data of which CMS had been unaware. CMS also was not prepared to collect overpayments using surety bonds until 3 years after the surety bond requirement was implemented and has collected a limited amount of overpayments from surety bonds to date. Finally, most of the overpayments for bonded suppliers will likely remain uncollected because a number of the suppliers have overpayments of more than \$50,000, and CMS can recover only up to the amount of the bond. CMS stated that it understands the importance of surety bonds as a program integrity tool and is exploring multiple avenues to strengthen this important tool.

The full text of CMS's comments is provided in Appendix A.

APPENDIX A

Agency Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: MAR 04 2013

TO: Daniel R. Levinson
Inspector General

FROM: Marilyn Tavenner */S/*
Acting Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: "Surety Bonds Remain an Underutilized Tool to Protect Medicare from Supplier Overpayments" (OEI-03-11-00350)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the OIG draft report entitled, "Surety Bonds Remain an Underutilized Tool to Protect Medicare from Supplier Overpayments." The objectives of the draft report were to determine: 1) the extent to which CMS maintains complete and accurate surety bond information for suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), and 2) identify the number of DMEPOS suppliers with overpayment debt, the extent to which these suppliers had surety bond coverage, and the amount of overpayment debt that could have been recovered through surety bonds since October 2009.

Since January 2012, when CMS finalized its contractor guidelines for collection of outstanding obligations from DMEPOS suppliers with surety bonds, CMS has been working to recover overpayment debts from DMEPOS suppliers by asserting claims against the surety companies. As of July 2012, CMS has successfully collected \$263,000 from surety companies for DMEPOS supplier debts. In addition, there have been cases where DMEPOS suppliers have repaid overpayments on their own initiative once they become aware CMS referred their debt to the surety company for collection. CMS believes its efforts to collect outstanding obligations from surety companies will continue to spur DMEPOS suppliers to satisfy their Medicare debts.

As noted in our technical comments to OIG, we disagreed with OIG's conclusions drawn from the data set utilized in its initial analysis. This is because in its initial request for overpayment data for this report, OIG asked for "information for all DMEPOS supplier overpayments identified between October 2, 2009, and April 1, 2011, that currently are outstanding." Overpayments identified between October 2, 2009, and April 1, 2011, which resulted from payments made prior to March 3, 2009, would not have been subject to collection from the surety.

When CMS received the preliminary draft report, we obtained data from all four DME Medicare Administrative Contractors (MACs) and attempted to replicate the original OIG report excluding all overpayments based upon claims with a date of service prior to March 3, 2009. Our analysis indicated 1,190 bonded suppliers had a total Medicare debt (overpayment) of **\$31,829,604**. The OIG has appropriately incorporated those comments into the report.

The CMS and its contractor exercised due diligence in processing administrative actions against suppliers that did not meet surety bond requirements for enrollment. CMS gave all suppliers sufficient time to provide evidence they had a surety bond in force prior to taking administrative action. CMS and its contractor took administrative action only after investigating and confirming that the bonds were not in place.

The CMS would also like to clarify what the criteria should be to determine if the collection of debts through surety bonds is appropriate. CMS believes that in this situation a surety is liable for overpayments related to payments made for services rendered on or after March 3, 2009.

The CMS understands the importance of surety bonds as a program integrity tool. CMS is exploring multiple avenues to strengthen this important tool. One such way is the implementation of multiple enhancements delineated below in 2013 in the Provider Enrollment, Chain, and Ownership System (PECOS) that will improve the accuracy, consistency, and accessibility of supplier information. In addition, CMS is also considering using the legislative authority given by the Affordable Care Act to require increased surety bonds based on suppliers' billing volume.

The CMS would like to express our gratitude to OIG for conducting this evaluation. CMS's responses to the OIG recommendations follow.

OIG Recommendation

The CMS shall improve oversight of supplier data to ensure accurate and consistent information.

CMS Response

The CMS concurs that there are opportunities for improvement in how surety bond information is captured within the PECOS. To increase accuracy and tracking of surety bond information in PECOS, CMS anticipates implementing the following enhancements between April and July of 2013.

- Add minimum and maximum date ranges and dollar values when entering surety bond information into PECOS to reduce keying errors.
- Add surety bond error checks that will be triggered anytime an enrollment record is created, updated, or saved, regardless of the change that is being made. This would ensure that information is correct and complete; if it is not, this change would require the MACs to correct or include any missing information.
- Add additional cross-reference information that would cross-walk an enrollment record's surety bond information with other DME locations and the total amount of the surety bond for all DME locations with the same Tax ID Number.

The CMS does not concur with the recommendation that we review all surety bond data within PECOS to identify other discrepancies or errors resulting from the transition from the Provider Information Management System to PECOS. During the course of OIG's study, CMS and the National Supplier Clearinghouse conducted a thorough review of all currently enrolled

DMEPOS suppliers and have verified that each entity, not otherwise exempt, is appropriately covered by a valid surety bond.

OIG Recommendation

The CMS shall immediately begin utilizing surety bonds to recover debts from bonded suppliers.

CMS Response

The CMS concurs with this recommendation and has commenced collecting overpayments from sureties. In January 2012, CMS published requirements and processes for CMS and its contractors to collect any outstanding obligations of 101 days or more from sureties. The DME MAC's perform these collection activities. As of July 2012, CMS collected approximately \$263,000 in DMEPOS supplier overpayments from sureties. The DME MACs are continuing to make requests for payments from sureties, and CMS expects more overpayments to be collected as a result.

OIG Recommendation

The CMS shall consider using the legislative authority given by the Affordable Care Act to require increased surety bonds based on suppliers' billing volume.

CMS Response

The CMS concurs with this recommendation. In light of the successful implementation of the DMEPOS surety bond requirement, the enactment of the Affordable Care Act, and the commencement of our surety bond collection efforts, CMS is considering issues and options related to a requirement that the DMEPOS surety bond amount be commensurate with the volume of the supplier's billing. CMS is also considering the possibility of requiring home health agencies and certain other provider and supplier types to obtain and maintain surety bonds as a condition of their enrollment.

OIG Recommendation

The CMS revise the collection guidelines to state that a surety is liable for overpayments related to payments made for claims with dates of service on or after March 3, 2009.

CMS Response

The CMS concurs with this recommendation and will update the guidelines appropriately.

Again, we appreciate the opportunity to comment on this draft report and look forward to working with OIG on this and other issues.

ACKNOWLEDGMENTS

This report was prepared under the direction of Robert A. Vito, Regional Inspector General for Evaluation and Inspections in the Philadelphia regional office, and Linda M. Ragone, Deputy Regional Inspector General.

Maria Schepise Johnson served as the team leader for this study, and Courtney Hilts assisted in conducting the study. Central office staff who provided support include Scott Manley and Christine Moritz.

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