

# Eye Care News

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## Maryland Optometric Association

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### SURETY BOND UPDATE:

Despite strong objections by AOA, on Oct. 2 the Centers for Medicare & Medicaid Services (CMS) reiterated its questionable position that a physician who supplies eyeglasses to a Medicare beneficiary following cataract surgery is acting as a medical supply company unless the physician performs an examination or test prior to furnishing the covered pair of eyeglasses or contact lenses. As a result, optometrists will need to obtain a surety bond and possibly get accredited if they choose to “simply” supply glasses without performing “any sort of examination or test” when a Medicare beneficiary comes into the practice with a prescription for glasses that was issued by another physician.

The AOA reminds members that optometrists are exempt, by law and regulation, from the surety bond for suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Optometrists are also currently exempt from DMEPOS accreditation. However, medical supply companies are subject to the bond requirement, which is designed to deter fraud and abuse, by October 2, 2009, and accreditation, which is intended to improve quality of care, by October 1, 2009. In the view of the Medicare program, optometrists and ophthalmologists are not practicing physicians but operating as medical supply companies when they fill prescriptions written by another physician for Medicare beneficiaries following cataract surgery.

Palmetto GBA, 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.” See the answer to frequently asked question #46: Go to

<http://www.palmettogba.com/palmetto/providers.nsf/DocsCat/National%20Supplier%20Clearinghouse~Supplier%20Enrollment~FAQs~Surety%20Bond%20Requirements~8525746A00550AA3852575A5005CA5A8>.

CMS reconsidered that policy this month after AOA vigorously objected, but the agency eventually responded that it continues “to believe that this FAQ is consistent with regulations.” The AOA and the American Academy of Ophthalmology (AAO) both explained to CMS that the policy was inappropriate for

the management of a Medicare beneficiary who has cataract surgery and provided numerous alternatives that were more consistent with the law, regulations, and intent of the surety bond requirement. Congress exempted physicians from the surety bond requirement, and AOA continues to believe that practicing physicians who supply post-cataract eyeglasses to Medicare beneficiaries with a prescription from another physician are providing professional services to patients.

The AOA does not recommend optometrists obtain a surety bond. Instead, the AOA suggests that 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 or ophthalmologist. 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. 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 for medical suppliers by not filling prescriptions for Medicare beneficiaries written by another physician. Optometrists may want to inform cataract surgeons who refer patients to them following cataract surgery not to write a prescription. Instead, when surgeons do not have an optical shop, they should refer their patients after surgery to optometrists without a prescription so that the ODs can determine the prescription and supply the eyeglasses. Otherwise, Medicare beneficiaries could lose access to their covered and necessary eyeglasses. Optometrists who turn away Medicare beneficiaries as a result of the CMS restrictions can encourage those beneficiaries to call 1-800-MEDICARE to complain about the Medicare policy.

To trigger the surety bond requirement, the only patients in question are Medicare beneficiaries who have never been patients of the optometrist previously. The surety bond requirement is not triggered when an optometrist supplies eyeglasses to non-Medicare patients or when an optometrist supplies eyeglasses to a Medicare beneficiary who is already a patient. Doctors who referred their patients for cataract surgery already have a doctor-patient relationship when the patient returns to the doctor for glasses after the surgery.

The AOA reminds members that the establishment of the doctor-patient relationship is usually a question of state law, not CMS policy, and that optometrists should continue to be aware of their legal obligations and duties to their patients regardless of the CMS requirement. In addition, optometrists should continue to follow whatever other state requirements apply when furnishing prescription eyeglasses.

Practicing optometrists are exempt from the surety bond requirement and accreditation but should be aware that dispensing glasses to Medicare beneficiaries without performing "any sort of examination or test" will cause the NSC to treat the practice as a medical supply company that needs a surety bond and possibly DMEPOS accreditation to retain Medicare billing privileges.

See

**[http://www.cms.hhs.gov/MedicareProviderSupEnroll/05\\_DMEPOS%20Surety%20Bond.asp#TopOfPage](http://www.cms.hhs.gov/MedicareProviderSupEnroll/05_DMEPOS%20Surety%20Bond.asp#TopOfPage)** for more information about the Medicare surety bond requirement.

The AOA has posted answers (below) to questions frequently asked by optometrists.

See

**<http://www.palmettogba.com/palmetto/providers.nsf/DocsCat/National%20Supplier%20Clearinghouse~Supplier%20Enrollment~FAQs~Surety%20Bond%20Requirements~8525746A00550AA3852575A5005CA5A8>** for NSC answers to FAQs by DMEPOS suppliers.

Q: Are optometrists exempt from the DMEPOS surety bond?

A: Yes. CMS recognizes that Congress exempted physicians from the surety bond requirement in the Balanced Budget Act of 1997.

Q: Are optometrists exempt from DMEPOS accreditation?

A: Yes. In the Medicare Improvements for Patients and Providers Act of 2008, Congress prohibited CMS from requiring physicians to meet the accreditation requirement unless CMS creates standards specifically for physicians. Although CMS has stated its intent to create such standards, it has not taken that step.

Q: If ODs are exempt, why are we told we still need to get a surety bond?

A: In some circumstances, Medicare considers a physician practice to be a medical supply company subject to the bond. Those circumstances include when an OD operates an actual general medical supply company, when an OD employs an optician who is enrolled as a DMEPOS supplier, and when an OD supplies covered eyeglasses without any sort of test or examination that would establish that the beneficiary is a patient when he or she enters the office for the first time with a prescription following cataract surgery.

Q: What if I referred one of my patients to a cataract surgeon, and the patient comes back after the procedure with a prescription for eyeglasses?

A: This patient should be considered your patient and you would not need a surety bond.

Q: What if a patient comes into my office with a prescription and I just fill the prescription?

A: If you don't do any sort of test or examination prior to filling the prescription for a beneficiary who has not been in the office previously, then CMS believes you are a medical supply company who must have a surety bond to provide that service.

Q: Do I have to notify CMS or the NSC that I am exempt from the surety bond?

A: You do not have to notify CMS or the NSC that you are an exempt physician but you should respond to correspondence from Medicare that demands a response "within 30 days" about whether you have a surety bond.

Q: When is the deadline for the surety bond?

A: October 2, 2009

Q: What do I do if I don't have a surety bond at that date?

A: You should obtain a surety bond if you plan to supply post-cataract eyeglasses to a so-called "walk in" Medicare patient without performing any sort of test or examination.

Q: Do I have to bill Medicare and/or the patient for the exam or test?

A: CMS does not specifically require that an exam or test be billed prior to dispensing eyeglasses. If you provide a covered service to a Medicare beneficiary, then you should collect a copayment and bill Medicare. If you provide an uncovered service and want to bill the patient, then you might need an Advance Beneficiary Notice of Noncoverage (ABN) signed before billing the patient. If you provide an uncovered service and do not plan to bill Medicare and/or the patient, then you should at least record the service in the medical record. Regardless of the CMS requirement to establish who is a patient for purposes of the physician exemption to the surety bond, ODs should abide by whatever other legal obligations exist.

Q: Does this apply to all patients who need glasses?

A: The Medicare surety bond only applies when supplying eyeglasses to Medicare beneficiaries who were not previous patients.

Q: Are ophthalmologists exempt?

A: Ophthalmologists, like optometrists, are exempt but face the same restrictions as ODs.

Q: Are opticians exempt?

A: Opticians are not exempt. Opticians who are enrolled as DMEPOS suppliers need to have a surety bond. Opticians who work in optometry offices do not need a surety bond as long as the optometrist owns the business and is enrolled as a DMEPOS supplier to bill in Medicare.

Q: What if I don't get a bond?

A: Medical supply companies that do not have a surety bond by October 2, 2009, are subject to a one-year revocation of Medicare billing privileges. If an optometrist plans to act as a medical supply company by providing eyeglasses to Medicare beneficiaries who are not patients, then the OD should have a surety bond prior to dispensing glasses to the general public.

Q: Can I turn away Medicare beneficiaries who are not my patients but need eyeglasses?

A: Yes. ODs are not required to provide eyeglasses to Medicare beneficiaries who are not patients.