

## Federal--Update on the DMEOPS Bonds

The pharmacists and pharmacy associations continue their efforts to exempt themselves or significantly amend both the accreditation and surety bond requirements now applicable to providers of durable medical equipment under Medicare and Medicaid. As previously reported, the health care reform bill in the US House, H.R. 3200, would exempt pharmacies from the \$50,000 surety bond now required of providers and suppliers. Three committees in the House worked on a common bill, but the House now is waiting for the bill from the Senate before it proceeds any further on the health care reform issues.

All providers of durable medical equipment should have posted the bond with the Centers for Medicare & Medicaid Services (CMS) as of October 2, the deadline in the CMS regulations. At the request of some of its members, SFAA confirmed that the CMS had not granted any extensions to the filing of the bond. At best, CMS may have told some suppliers that if they mailed evidence of their bond as of October 2, that would constitute compliance. SFAA had heard from its members, however, that the numbers of providers and suppliers seeking bonding has not been as high as expected.

To date, the pharmacies have been successful in delaying the October 2 deadline for compliance with the accreditation requirements. On September 29, Representative Zachary Space (D-OH) introduced H.R. 3663, which delayed the date by which the pharmacies were to comply with the accreditation requirement under the Medicare program from October 1, 2009, to January 1, 2010. Representative Space is the primary sponsor for the standalone legislation in the House to exempt pharmacies from the bonding requirement. The provisions from that bill were incorporated into H.R. 3200, the House health care reform bill.

H.R. 3663, the accreditation delay bill, passed the House on September 30 and was sent to the Senate, which passed it on October 5. The bill was sent to the President for signature yesterday. It is interesting that the pharmacies did not seek an extension of the time to comply with the surety bond requirement when they clearly had the chance. All of the news releases and other communications from the pharmacists and pharmacy associations indicate that they expect Congress to enact some form of permanent change in the accreditation and/or bonding requirements for pharmacies before the end of the extension period. According to the CMS data, there are around 113,000 providers and suppliers of durable medical equipment, of which pharmacies are the largest group at 55,000. The pharmacies have urged Congress to relieve them of the costs and burdens of compliance of both the accreditation and bonding requirements. Perhaps the absence of requests for bonding at levels that the sureties expected stems from the fact that the bonding and accreditation issues are intertwined in the perspective of the pharmacies, while the fact remains that an extension was granted only for the accreditation requirements.

On the Senate side, the Senate Finance and Health, Education, Labor and Pensions (HELP) Committees have their own bills for health care reform. The HELP Committee bill does not contain the exemption for pharmacies from the bond requirement. The Senate Finance Committee has released only a conceptual draft of the bill that it is working on. Under the draft, it is noted that current law provides the Secretary of Health and Human Services (HHS) with authority to promulgate regulations for enrolling providers under Medicare and Medicaid, and that CMS has promulgated regulations to enroll and screen providers and suppliers that receive billing privileges. As described in the conceptual draft of the Senate Finance Committee bill, HHS would be required to screen all providers and suppliers before granting billing privileges. At a minimum, this would require licensure checks, and additional screening measures according to risk, as the Secretary would prescribe. These could include fingerprints, criminal

background checks, multistate database inquiries and unannounced site visits. The Senate bill also would impose new disclosure and other requirements on providers and suppliers enrolling in Medicare and Medicaid and would authorize the Secretary to require surety bonds up to \$500,000. The bond amount would be commensurate with the volume of billing.

The conceptual draft from the Senate Finance Committee does not contain any explicit waivers of or exemptions from the bond requirement for pharmacies. In fact, the only waiver or exemption involving pharmacies concerns accreditation. One would presume that if the Senate Finance Committee intended to waive bonds for pharmacies, it would have addressed the waiver in the same paragraph in which the accreditation waiver is discussed. The \$500,000 maximum bond amount may represent tiered bond amounts based on the size and volume of business of the provider or supplier. SFAA suggested a tier system to the House and Senate Committee staffs as an alternative to waiving the bond for pharmacies. On the other hand, the Senate text describing the screening of providers and suppliers could be read to mirror the language in the House bill, which requires only new enrollees and those with a past history of violations to obtain a bond. In addition, the reference to HHS developing screening measures “according to risk” might be read to mean that HHS has additional authority to grant exemptions or make changes in the existing accreditation and bonding requirements for certain providers.

The next step in the process in the Senate will be for the Finance Committee to mark up and send a bill out of committee. The Senate Finance Committee is scheduled to convene on October 13, and a vote on the bill could come any time thereafter. The Senate Finance Committee bill will have to be reconciled with the HELP committee legislation in a process that has not yet been determined, so the health care reform bill has a ways to go in the Senate.