

January 31, 2019

Ms. Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Verma:

On behalf of the 163,000 members of the American Dental Association (ADA), the world's oldest and largest dental professional organization, it has recently come to our attention that dentists are being told by surety bond vendors that the dentists must purchase surety bonds if they are providing obstructive sleep apnea devices (oral appliances) as DMEPOS providers under Medicare. Physicians and non-physician practitioners, as defined in section 1842(b)(18) of the Act, are provided an exception to the surety bond requirement when items are furnished only to the physicians' or non-physician practitioners' own patients as part of his or her physician service.

It is our understanding, which was verified on a December 19th telephone call with CMS staff, that most dentists are providing items that have been "prescribed" by other providers, and that they do not meet the requirements of this exemption. Thus, dentists who are providing sleep apnea devices to their patients must purchase a \$50,000 surety bond per location if they bill Medicare as DMEPOS suppliers.

There were two scenarios discussed during the call:

1. A patient of record sees their dentist and the dentist determines the patient may have sleep apnea. As the patient is a Medicare beneficiary, the dentist explains to the patient that Medicare will not cover an oral sleep apnea device unless the patient has obtained a diagnosis from a sleep clinic or sleep physician prior to the dentist providing the device. The patient returns with a diagnosis from the authorized physician and the dentist treats and submits a claim for the device as a DMEPOS supplier. According to the local coverage determinations for that region, the claim is valid and paid by the contractor.
2. A patient is referred to a sleep clinic by their physician resulting in a diagnosis of obstructive sleep apnea. The sleep clinic recommends the use of an oral device to treat the obstructive sleep apnea and refers the patient to a dentist (or dentists) for treatment. The dentist provides the device and submits the claim as a DMEPOS provider. Again, the claim is valid and is paid.

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We believe that dentists are making these appliances for their patients. Even if the appliance was ordered by a physician, the dentist is not simply providing the device without seeing the patient. The patient becomes a patient of the dentist when the patient is examined and impressions of the patient's mouth are made to create the ordered appliance(s), etc. Even if it is considered a referral from the physician, the patient also becomes a patient of record of the dentist.

We appreciate clarification on this and request that dentists be provided the same exception as physicians as to the surety bond requirement pursuant to 42 CFR 424.57(d)(15)(i)(C) of the Act, "Physicians and nonphysician practitioners as defined in section 1842(b)(18) of the Act, are provided an exception to the surety bond requirement when items are furnished only to the physician or nonphysician practitioner's own patients as part of his or her physician service."

If you have any questions, or wish to further discuss these matters, please contact Dr. Dave Preble at 312-440-2756.

Sincerely,

/s/

Jeffrey M. Cole, D.D.S., M.B.A.
President

/s/

Kathleen T. O'Loughlin, D.M.D., M.P.H.
Executive Director

JMC/KTO:dm

cc: Dr. Christopher Bulnes, chair, Council on Dental Benefit Programs
Dr. Dave Preble, senior vice president, Practice Institute