

# Federal Legislative Alert

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## ACTION NEEDED

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### Ask U.S. Representatives to Co-Sponsor and Support H.R. 1970

#### Bill Adds Pharmacies to List of Health Care Providers Exempted from CMS's DMEPOS Surety Bond Requirements

**About the Bill:** On April 2nd, Representatives Zack Space (D-OH) and Jo Ann Emerson (R-MO) introduced H.R. 1970, which would exempt pharmacies from the Centers for Medicare and Medicaid (CMS) Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) surety bond requirement to ensure patients have continued access to quality care. CMS exempted 14 health care providers from the surety bond requirement but did not exempt pharmacies. CMS indicated the surety bond would cost community pharmacies \$1,500 annually. This surety bond requirement, in addition to the burdensome and costly accreditation requirement, will make it much more difficult for community pharmacies to continue to provide DMEPOS to patients.

**Background:** The CMS regulation requires that all suppliers of DMEPOS who are billing Medicare and Medicaid must have a minimum \$50,000 surety bond for each National Provider Identifier (NPI) number they have, in order to continue to offer these services to Medicare and Medicaid customers. The requirement states that suppliers applying for a new NPI number after May 4, 2009, must have the bond in place. All other businesses offering DMEPOS must have the bond in place by October 2, 2009.

Community pharmacies are the only licensed health care providers supplying DMEPOS who must meet the new surety bond requirements. H.R. 1970 contains language exempting pharmacies from what would be a time-consuming, expensive, unnecessary and redundant rule. Under this bill, pharmacies would join the 14 other health care providers who are conditionally exempted by CMS. CMS provides no valid reason why state-licensed pharmacies should not also receive this exemption.

The National Community Pharmacists Association (NCPA), Tennessee Pharmacists Association (TPA), and all other state pharmacy associations are supporting and working toward passage of this important legislation. All of these organizations laud the introduction of this legislation and commend Representatives Space and Emerson for their leadership in helping find a legislative solution to what could become a patient access problem.

**Action Needed:** Please take a moment to contact your U.S. Representative to urge his or her support and co-sponsorship of H.R. 1970, which will allow pharmacists to continue to provide medical supplies to patients.

To learn who your U.S. Representative is and how to contact him or her, visit [www.congress.org](http://www.congress.org), type your zip code in the "Enter Your ZIP Code" box on the right, and click Go. On the page listing your elected officials, click your U.S. Representative (under "President & Congress").

#### Talking Points:

- Community pharmacies should not be the only licensed health-care providers burdened with this surety bond.

- Community pharmacists possess professional training and expertise. As state-licensed healthcare professionals, they and their businesses are already subject to government regulations and oversight and would incur civil and criminal sanctions for violations.
- The surety bond could cost community pharmacies \$1,500 annually, which is cost prohibitive for pharmacists. Many pharmacies may be forced to discontinue carrying DMEPOS because, with the low margin on the DMEPOS supplies, income from their DMEPOS is not at a level to support such costs. Patients in under-served communities will have to travel much longer distances to get these services, or even be forced to use mail order and internet operations, where fraud is more prevalent. If pharmacies stop providing these DMEPOS services, patients will lose access to pharmacists' advice and expert training, which could dramatically undermine the potential benefits of these medical supplies.
- DMEPOS provided by pharmacies include: diabetic test supplies, ostomy supplies, canes, walkers, wheelchairs, portable commodes, compression hose, mastectomy prosthetics, neck and body orthotics, wound care and other products and services vital for patients.
- CMS should expel and prosecute fraudulent suppliers instead of imposing unnecessary costs upon legitimate, licensed health care professionals who are helping patients. To ensure patients have continued access to quality care, pharmacies must be exempted from the new CMS accreditation requirements, just like the other already-exempted providers.

**The Ask:** Please co-sponsor H.R. 1970, which will allow pharmacies to continue to provide medical supplies to patients.

Pharmacists Mutual Insurance Company's subsidiary, Pro Advantage Services, Inc., has access to several companies that are approved by CMS to write the Medicare Surety Bonds. However, due to the volume of bonds that will need to be processed and issued prior to the deadlines stated above, they encourage pharmacies not to wait to submit an application. Pro Advantage Services can issue a bond with the appropriate date and accept payment, and, if legislation changes, refund the premium in full, with return of the original bond prior to the effective date. Waiting until later in the year to apply will likely result in delays in issuing the bond and could impact service to pharmacy customers. While waiting for the final information from CMS, Pro Advantage Services is continuing to collect names and contact information for those who will need this bond. They have negotiated rates with the bond carriers that are significantly below the \$1,500 that CMS initially stated for the base \$50,000 bond. For information, contact Pharmacists Mutual at [info@phmic.com](mailto:info@phmic.com) or 800-247-5930, ext. 4260; Chris Meulenberg, ext. 7114; or Curt Davis, ext. 7123.