

COVID-19: CMS EXPANDS ACCELERATED/ADVANCE PAYMENT PROGRAM TO ASSIST PROVIDERS IMPACTED BY THE PANDEMIC AS AHA AND MEMBERS OF CONGRESS URGE REDUCTIONS TO INTEREST RATES

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On March 30, 2020, the Centers for Medicare & Medicaid Services (CMS) announced an expansion of Accelerated and Advance Payments Program (the "Program") for providers and suppliers impacted by the COVID-19 public health emergency. The purpose of the Program is to increase cash flow for the duration of the emergency to Part A providers and Part B suppliers (collectively, "providers/suppliers") participating in the Medicare program that have been impacted by the emergency.

The Program permits qualified providers/suppliers to request from their assigned Medicare Administrative Contractor (MAC) a specific payment amount, with most providers/suppliers able to request up to 100 percent of the Medicare payment amount for a three-month period.

CMS has issued "Fact Sheet: Expansion of the Accelerated and Advance Payments Program for Providers and Suppliers During COVID-19 Emergency" summarizing the process for requesting accelerated and advance payments and providing each MAC's contact information. [1]

ELIGIBILITY TO RECEIVE ACCELERATED/ADVANCE PAYMENTS

In order to qualify for a payment under the Program, the provider/supplier must:

- Have billed Medicare for claims within 180 days immediately prior to the date of signature on the provider's/supplier's request form;
- Not be in bankruptcy;
- Not be under active medical review or program integrity investigation; and
- Not have any outstanding delinquent Medicare overpayments.

PAYMENT AMOUNTS AND PROCESSING TIMES

Providers/suppliers seeking a payment under the Program may request a specific amount using an Accelerated/Advance Payment Request form provided on each MAC's website. CMS has instructed MACs to review and issue payments within seven (7) calendar days of receiving the payment request.

RECOUPMENT AND RECONCILIATION OF ACCELERATED AND ADVANCE PAYMENTS

Accelerated and advance payments to providers and suppliers will be recouped or reconciled after a certain period of time. Providers and suppliers can continue to submit claims as usual after the issuance of the accelerated or advance payment and they will receive full payments for their claims during the 120-day delay period. Recoupment will begin 120 days after receiving the accelerated or advance payments and every claim submitted by the provider/supplier will automatically be offset from the new claims to repay the accelerated or advance payment.

For most hospitals, including inpatient acute care hospitals, children's hospitals, certain cancer hospitals, and critical access hospitals (CAH) will have up to one year from the date the accelerated payment was made to repay the balance. One year from the accelerated payment, the MACs will perform a manual check to determine if there is a balance remaining, and if so, the MACs will send a request for repayment of the remaining balance, which will be collected by direct payment. The accelerated payment reconciliation process will occur at the final cost report process (180 days after the fiscal year closes) for Part A providers who receive Period Interim Payment. All other Part A providers and Part B suppliers will have up to 210 days for the reconciliation process to begin.

INTEREST ON ACCELERATED/ADVANCE PAYMENTS

CMS has confirmed that interest will accrue on accelerated/advance payments that are not repaid timely. [2] The repayment timeline will allow providers/suppliers to repay accelerated/advance payments during the initial 120-day period, followed by a 90-day recoupment period, for a total of 210 days. Where a provider/supplier has a remaining unpaid balance after 210 days, CMS will issue a demand letter within 30 days, which will identify the unpaid balance and offer the option for an extended repayment plan. Under the extended repayment plan, interest will be applied to the unpaid balance, currently set at the rate of 10.25 percent. [3]

AHA AND MEMBERS OF CONGRESS REQUEST CMS WAIVE OR REDUCE INTEREST RATES ON ACCELERATED/ADVANCE PAYMENTS

Notably, in response to CMS's expansion of the Program and intention to apply interest payments on accelerated/advance payments not timely repaid, on April 6, 2020 the American Hospital Association (AHA) sent a letter to HHS Secretary Alex Azar and CMS Administrator Seema Verma, in which the AHA urged HHS and CMS to waive, or substantially reduce, the interest rate on any balance owed on accelerated/advance payments

pursuant to the COVID-19 pandemic. [4] Specifically, the AHA detailed four options that could be used to waive or reduce interest rates:

1. Utilize HHS's authority under 45 CFR 30.18(g)(1) to waive interest completely or waive collection of interest on the portion of the debts that have not been paid beyond 30 days from the date that interest began to accrue.
2. Employ CMS authority to refrain from issuing a demand letter, given that the issuance of a demand letter under 42 CFR 405.378 initiates the process for charging interest on the outstanding balance on repayment.
3. Instruct CMS to refrain from sending a demand letter for remaining balances on accelerated/advance payments.
4. Alternatively, HHS could utilize its authority under 45 CFR 30.18(b)(2) to lower the interest rate for accelerated/advance payments that hospitals are unable to repay timely. AHA suggests HHS apply the statutorily authorized United States Treasury rate of 2% in lieu of the current 10.25% rate. [5]

The AHA notes that as financial strains on hospitals and other providers continue to mount, many hospitals, particularly rural providers, will struggle to remain operational and that the high interest rate only places these struggling providers at higher risk. [6]

On April 8, 2020, a bipartisan group of over 30 members of the United States Senate sent a letter to Secretary Azar urging CMS to adopt flexibilities with respect to the Program. The letter requested that providers/suppliers be permitted an extended repayment deadline and asked CMS to waive or modify the interest rate on accelerated/advance payments.

PROCESS FOR REQUESTING ACCELERATED AND ADVANCE PAYMENTS

Each provider/supplier must ensure that the Accelerated/Advance Payment Request form (found on the applicable MAC's website) is complete, signed by an authorized representative and submitted to the MAC by fax, email or mail. Note that several of the MACs are requiring providers/suppliers to submit the request electronically. The following information must be included on the form:

- Provider/supplier identification information, including legal business name; correspondence address; National Provider Identifier; and any other information as required by the MAC.
- Amount requested based on the provider/supplier's need. Providers/suppliers will be able to request up to 100 percent of the Medicare payment amount for a three-month period, except inpatient acute care hospitals, children's hospitals, and certain cancer hospitals may request up to 100 percent of the Medicare payment amount for a six-month period and CAHs may request up to 125 percent of their payment amount for a six-month period.
- Reason for request, by checking box 2 ("Delay in provider/supplier billing process of an isolated temporary nature beyond the provider/supplier's normal billing cycle and not attributable to other third

party payers or private patients."), and indicating that the request is for an accelerated/advance payment due to the COVID-19 pandemic.

CONCLUSION

The expansion of the Program has proven exceedingly successful. On April 7, 2020, CMS announced that in a little over a week, CMS had received over 25,000 requests from health care providers and suppliers for accelerated and advance payments and had approved over 17,000 of those requests in the last week totaling \$34 billion through the expansion of the Program. [7] K&L Gates will continue to monitor any changes or developments to the Program and will provide updates accordingly.

Contact the authors of this article or your K&L Gates attorney for assistance with applying for an accelerated/advance payment or to receive updates on Medicare reimbursement during the COVID-19 emergency.

NOTES:

- [1] The Centers for Medicare & Medicaid Services ("CMS"), Fact Sheet: Expansion of the Accelerated and Advance Payments Program for Providers and Suppliers During COVID-19 Emergency, <https://www.cms.gov/files/document/Accelerated-and-Advanced-Payments-Fact-Sheet.pdf> (last visited March 30, 2020).
- [2] CMS, Transcript, COVID-19: Accelerated and Advance Payment Program Changes (Apr. 2, 2020), *available at* <https://www.cms.gov/files/zip/covid19acceleratedandadvancepayment04022020.zip>.
- [3] *Id.*
- [4] Letter from American Hospital Association, to Department of Health and Human Services Secretary Alex Azar (April 6, 2020), *available at* <https://www.aha.org/system/files/media/file/2020/04/aha-urges-hhs-waive-interest-substantially-reduce-interest-rate-accelerated-advanced-payments-4-6-2020.pdf>.
- [5] *Id.*
- [6] *Id.*
- [7] CMS, Press Release, CMS Approves Approximately \$34 Billion for Providers with the Accelerated/Advance Payment Program for Medicare Providers in One Week (Apr. 7, 2020).

KEY CONTACTS



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