



HEALTH LAW ALERT

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IMPORTANT CHANGES TO MEDICARE'S ACCELERATED AND ADVANCE PAYMENT PROGRAM

As part of a new funding bill enacted by Congress and signed into law on September 30, 2020, the repayment rules for the Medicare Accelerated and Advance Payment (“AAP”) program have been changed to significantly benefit healthcare providers who participate in the Medicare program. The new law provides some flexibility in repayment of the amounts advanced to providers by the Centers for Medicare and Medicaid Services (“CMS”). This flexibility includes both a delayed start for repayment, a longer period to repay the full sum, and a reduced interest rate for amounts that are not paid during the extended recoupment period.

Under the Medicare AAP program, CMS made advanced payments to providers in March and April 2020 to provide needed resources during the COVID-19 public health emergency when providers were experiencing cash flow shortfalls and struggling to maintain their healthcare operations. The AAP program was discussed in a prior Health Law Alert by this writer on April 1, 2020, available [here](#). Further AAP payments were suspended by CMS by the end of April 2020 (see Health Law Alert dated April 28, 2020 available [here](#).)

The AAP payments were essentially a loan from CMS to be repaid by providers via a recoupment process. As originally structured, CMS would recover the advance payments by offsetting them from future Medicare claims submitted by providers beginning 120 days (4 months) after the advance payments were disbursed to providers. Hospitals would be given up to 365 days from receipt of the payments to fully repay them, and other Medicare Part A and Part B providers would be given up to 210 days (7 months) from receipt of the payments to fully repay the balances to CMS.

Providers will now be pleased to learn that under the recently enacted legislation the following changes to the AAP repayment process will be implemented:

- Recoupment of the advance payments will be delayed to begin one year after issuance of such payments to a provider.
- Part A and Part B providers will have 29 months from the date of receipt of the first advance payment to complete the repayment process. Thus, if the first advance payment were made to a provider in April 2020, the provider would have until September 2022 to repay the balance, interest free.



- Once recoupment begins, CMS will use a graduated recoupment schedule, reducing the amount of its recoupment from provider claims from the 100% that was originally planned, to only 25% during the first 11 months of the recoupment period, and 50% during the subsequent 6 months of the recoupment period. Any outstanding balance that remains at the end of the recoupment period will then have to be repaid in full by the provider or be subject to interest payment.
- Interest for balances due from any unrecovered advance payments will be reduced from the rate typically set by the Secretary of the Treasury for late payments which is currently 9.5% to a rate of 4%.

It appears that Congress recognized the difficulties faced by providers due to the ongoing COVID-19 pandemic and its devastating effect on healthcare operations. It also seems that CMS recognized the hardships experienced by providers when it quietly refrained from beginning its recoupment of the advance payments as they came due at the 4-month juncture as originally planned. Providers who received advance payments will now be able to enjoy the above benefits under the new law. Although CMS has not yet released any announcement to providers as of this writing, it is expected that CMS will issue some form of guidance to notify providers of the new repayment and recoupment terms for the advance payments. It is also anticipated that some providers may have a healthy cash flow and may wish to avoid the recoupment process or eliminate the liability of the advances on their balance sheets. Such providers should contact their Medicare Administrative Contractor (MAC) to discuss the process of repaying the full amount sooner than required. Nevertheless, whether all providers take advantage of the new provisions or not, it is clear that the new law provides welcome flexibility in the repayment process and will help alleviate some of the pressure looming over providers to repay the Medicare advance payments.

If you have any questions, please contact
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