

Coronavirus

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CARES Act: Medicare Advanced Payment Protocol

King & Spalding's Healthcare Finance practice is working to keep clients informed of issues that may be of concern to lenders in the healthcare space. The federal government has implemented a number of relief programs in response to the COVID-19 public health emergency. Many borrowers in the healthcare industry may be seeking funds under the recently-expanded Medicare Accelerated and Advanced Payment Program, which offers an advance against future Medicare revenues. Accessing funds under this program may have implications under borrowers' credit agreements. Set forth below is a high-level summary of this program, which includes details that are likely to be relevant in assessing these implications.

- **Background:** The Accelerated and Advance Payment Program operated by the Centers for Medicare and Medicaid Services (CMS) is intended to provide emergency funding and address cash flow issues where there is a disruption in claims submission or claims processing for Medicare providers and suppliers. The program has existed for many years to provide liquidity for hospitals, and CMS has expanded it to include non-hospital providers that may be experiencing cash-flow issues as a result of the COVID-19 public health emergency.
- **Nature of Advances:** Payments under the program are essentially advances of Medicare revenues that CMS expects would be paid to the provider or supplier for future services. As described in further detail below, the advance does not become a debt that accrues interest unless and until the provider fails to satisfy the advance through offsets against future claims or direct repayment within a certain timeframe (generally 240 days). Whether a payment received under the program is considered "debt" for purposes of a credit agreement will depend on the specific definition of "Indebtedness" (or other applicable term) used in the agreement.
- **Eligibility:** To qualify for the advance/accelerated payments, the provider or supplier must: (1) have billed Medicare for claims within 180



days prior to the request, (2) not be in bankruptcy, (3) not be under active medical review or program integrity investigation, and (4) not have any outstanding delinquent Medicare overpayments.

- **Amount of Payment / Interest:** Non-hospital providers and suppliers may request up to 3 months of funds. The exact amount will be determined based on the prior 3 months of Medicare revenues. Inpatient acute care hospitals, children's hospitals, and certain cancer hospitals may request up to 6 months' of funds. Hospitals qualifying as critical access hospitals can increase this to 125% of 6 months' funds.
- **Mechanics of Advance / Repayment:**
 - The request is submitted to the assigned third-party administrator and the payment should be issued within 7 days.
 - During the first 120 days after the advance is paid, Medicare will continue to pay the provider or supplier for claims that it submits.
 - Beginning on day 121, Medicare will no longer pay for claims that are submitted and will instead offset the amount that would be paid against the amount advanced. The provider or supplier then has 90 days (i.e., from day 121 to day 210 after the original advance) to satisfy the balance of the advance through these offsets.
 - If the balance of the advance is not satisfied through offsets after day 210, then the third-party administrator will send a demand letter giving the provider or supplier 30 days to repay the remaining amount.
 - If any portion of the advance remains unsatisfied after the 30-day period set forth in the demand letter, then the advance is considered a debt and interest begins to accrue on day 240. The applicable interest rate is approximately 10%. The provider or supplier can request to be placed on a payment plan, which CMS has discretion to approve. If the provider or supplier makes no effort to pay off the balance, then the overpayment will be referred to the Treasury Department for collection.

The repayment process for hospitals is a bit different, as they have up to 1 year to repay the balance owed. After 1 year the third-party administrator will send a request for repayment.

Lenders should expect cash flow in the 120-210 period to reflect Medicare's offsetting process and should effectively treat the advance payments as senior debt. Note that because CMS has a setoff right they will be paid ahead of other creditors, including those with UCC liens, with respect to any Medicare receivables.

If you have any questions about the program, please let us know.



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