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Client Alert: H.R. 8337: Affording Additional Financial Flexibilities for Accelerated and Advanced Payment Program

INDUSTRY SECTOR

Health Care

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At the start of the COVID-19 pandemic, the Centers for Medicare and Medicaid Services (“CMS”) expanded the existing Accelerated and Advance Payments (“AAP”) Program to allow more providers and suppliers to participate. The goal was to reduce the extent of liquidity issues caused by COVID-related revenue shortfalls.

For context, the AAP Program generally aims to address cash-flow issues that providers face because of disruptions in claims submission and/or claims processing. The program typically focuses on mitigating the effects of localized natural disasters like hurricanes, earthquakes, floods, and similar circumstances. AAP Program funds received are loans that have certain timelines and terms for repayment. One method of repayment is through CMS’s offsetting of reimbursements owed to the provider for items and services furnished to Medicare/Medicaid beneficiaries.

Under the Continuing Appropriations Act, 2021 and Other Extensions Act, H.R. 8337, effective October 1, 2020, Congress altered the terms and timelines for AAP Program repayments. H.R. 8337 made three important changes:

- Extending Time for Repayment – Recipients of AAP Program loans have to begin repayment one year from the receipt of initial funds. Previously, this deadline was 120 days from receipt.
- Reducing Recoupment Rates – During the first 11 months of the repayment period, the offset or “recoupment” rate will be 25 percent of the amount due to the provider. Thereafter, during the succeeding six months, the rate will be 50 percent of the amount due to the provider. Previously, loan repayments could have fully offset Medicare reimbursements.
- Reducing Interest Rate – If any loan balance remains after 29 months from receiving the initial AAP Program funds, CMS will issue a letter demanding full repayment within 30-days. If full repayment is not made in that time, any remaining balance will be subject to a four percent interest rate and will be assessed for each 30-day period that the balance remains unpaid. Without H.R. 8337, remaining balances would have been subject to an interest rate of 10.25 percent.

Beyond the flexibilities offered through H.R. 8337, CMS will also continue to allow providers to pursue an Extended Repayment Schedule ("ERS"), a statutorily authorized debt payment schedule for providers facing a "hardship" or "extreme hardship." For eligible providers, the ERS could extend the repayment schedule for up to five years for "extreme hardships."

Finally, it bears repeating that the funds received through the AAP Program are loans. Consequently, depending on the circumstances, providers may have specific notification or approval requirements, as the receipt of AAP Program funds may implicate bond covenants and/or the rights of lenders and creditors. Providers should remain mindful of and diligent about fulfilling any such requirements.

If you have questions, please contact Adam Galat at 419.321.1385 or agalat@shumaker.com.