WINSTON & STRAWN LLP

CLIENT ALERT

CMS Issues Regulatory Waivers Easing Restrictions on Durable Medical Equipment Suppliers and Expands Accelerated/Advanced Payment Program

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As we previously reported, the Center for Medicare & Medicaid Services (CMS) recently issued a series of Blanket Regulatory Waivers pursuant to its authority under Section 1135 and 1812(f) of the Social Security Act, including waivers that impact DME suppliers. CMS also issued a fact sheet providing an overview of the regulatory changes designed to support various components of the health care system response to the COVID-19 public health emergency (PHE), including:

- Waiver of replacements requirements for lost, destroyed, damaged, or unusable DME Prosthetics, Orthotics, and Supplies (DMEPOS) as well as accreditation requirements for newly enrolled DMEPOS suppliers and proof of delivery signature requirements.
- Waiver of restriction that in order to qualify for accelerated or advance payments, providers must not have outstanding delinquent Medicare overpayments. Medicare will start accepting and processing the accelerated and advanced payment requests immediately.

The full scope of changes adopted by CMS are discussed in greater detail below.

Durable Medical Equipment, Prosthetics, orthotics and supplies (DMEPOS)

Lost, Destroyed, Damaged, or Unusable DMEPOS. When DMEPOS is lost, destroyed, irreparably damaged, or otherwise rendered unusable, CMS is allowing DME Medicare Administrative Contractors (MACs) the flexibility to waive replacements requirements such that the face-to-face requirement, new physician's orders, and new medical necessity documentation are not required.

Suppliers must still include a narrative description on the claim explaining why the equipment must be replaced if the DMEPOS was lost, destroyed, irreparably damaged, or otherwise rendered unusable or unavailable as a result of the PHE.

Prior Authorization in DMEPOS. CMS is pausing the national Medicare Prior Authorization program for certain DMEPOS items.

DMEPOS Accreditation. CMS is not requiring accreditation for newly enrolling DMEPOS and extending any expiring supplier accreditation for a 90-day time period.

Signature Requirements. CMS is waiving signature and proof of delivery requirements for Part B drugs and DME when a signature cannot be obtained because of the inability to collect signatures.

Suppliers should document in the medical record the appropriate date of delivery and that a signature was not able to be obtained because of the PHE.

CMS released guidance that provides details regarding the lifting of restrictions for DMEPOS.

EXPANSION OF ACCELERATED/ADVANCE PAYMENT PROGRAM

As part of the CARES Act, CMS expanded its Accelerated and Advance Payment Program to a broader group of Medicare Part A providers and Part B suppliers, including HHAs, hospice providers, and DME suppliers. The program is designed to increase cash flow to providers and suppliers impacted by COVID-19, including those that are impacted by disruption in claims submission and/or processing during the PHE. In recent remarks during a White House press briefing, CMS Administrator Seema Verma reported that the agency has distributed more than $34 billion to providers/suppliers—roughly 70 percent of the more than 25,000 claims received in the first week of the expanded program.

To qualify for payment from the program—which effectively operates as a loan—the provider/supplier must:

1. Have billed Medicare for claims within 180 days immediately prior to the date of signature on the provider's/supplier's request form;
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. Qualified providers/suppliers will be asked to request a specific amount using an Accelerated or Advance Payment Request form provided on each MAC's website. Most providers and suppliers will be able to request up to 100% of the Medicare payment amount for a three-month period.

Processing Time. Each MAC will work to review and issue payments within seven calendar days of receiving the request.

Repayment. CMS has extended the repayment of these accelerated/advance payments to begin 120 days after the date of issuance of the payment. The repayment timeline varies by the type of provider. Inpatient acute care hospitals, children's hospitals, certain cancer hospitals, and Critical Access Hospitals (CAHs) have up to one year from the date the accelerated payment was made to repay the balance. All other Part A providers and Part B suppliers will have 210 days from the date the accelerated or advance payment was made to repay the balance.

Recoupment and Reconciliation. Under the expansion, recoupment will not begin for 120 days. During this period, providers/suppliers can continue to submit claims as usual after the issuance of the accelerated or advance payment. Providers/suppliers will receive full payments for their claims during the 120-day delay period. At the end of the 120-day period, the recoupment process will begin, and every claim submitted by the provider/supplier will be offset from the new claims to repay the accelerated/advance payment.

CMS released a Fact Sheet that provides details regarding eligibility for the program, the process for claims submission, and responses to common questions.

Additional resources

Beyond the waivers and exceptions noted above, CMS has also issued guidance for infection control for each component of the health care system. Below is a link DME suppliers can review for guidance.

- Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fact Sheet

For any questions regarding the impact of these orders, please contact Amandeep Sidhu or your Winston relationship attorney. View all of our COVID-19 perspectives here. Contact a member of our COVID-19 Legal Task Force here.

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