

**Congress of the United States**  
**Washington, DC 20515**

September 22, 2020

The Honorable Alex M. Azar II  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Secretary Azar and Administrator Verma:

We are writing to express our serious concerns regarding the Centers for Medicare & Medicare Services' (CMS) lack of transparency surrounding the Accelerated and Advance Payment (AAP) Program and the impact on the Medicare program. The programs provide temporary mitigation for cash flow challenges that providers face during emergencies like the coronavirus disease of 2019 (COVID-19) pandemic. However, in expanding the scope of eligible providers beyond what Congress authorized, we are concerned that CMS has jeopardized the integrity of the Hospital Insurance (HI) and Supplemental Medical Insurance (SMI) Trust Funds in a manner that threatens the long-term financial viability of the program, would significantly raise Part B premiums, and could harm beneficiary access. We request additional information and an immediate briefing to understand the full impact of CMS's unauthorized decision to expand the AAP programs.

In the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), Congress authorized an expansion of the Accelerated Payment Program. It expanded the number of Medicare Part A providers eligible to receive such payments, and it increased the maximum payment amount. CMS subsequently announced changes to further expand accelerated payments to additional Part A providers, and to expand the Advance Payments Program for Part B providers and suppliers beyond the provisions in the CARES Act.<sup>1 2</sup> In May, several of us wrote to request additional information about the program, and to

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<sup>1</sup> Letter from Rep. Frank Pallone, Jr., Chairman, House Committee on Energy and Commerce, and Rep. Richard E. Neal, Chairman, House Committee on Ways and Means, to Secretary of Health Human Services Alex M. Azar II and Centers for Medicare and Medicaid Services Administrator Seema Verma (May 7, 2020). ([energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/HHS.CMS\\_.%202020.05.7.pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/HHS.CMS_.%202020.05.7.pdf)).

<sup>2</sup> Centers for Medicare and Medicaid Services, *FACT SHEET: EXPANSION OF THE ACCELERATED AND ADVANCE PAYMENTS PROGRAM FOR PROVIDERS AND SUPPLIERS DURING COVID-19 EMERGENCY* ([www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf](https://www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf)).

understand CMS's future plans for the program.<sup>3</sup> To date, we have not received an adequate response from CMS.

Further, it has come to our attention that the Advance Payments Program, which provided Part B payments to Part A and B providers without Congressional authorization, resulted in a roughly \$40 billion hole in the SMI Trust Fund. We are concerned by CMS's seemingly cavalier attitude toward the Trust Funds, in particular the decision to proceed with a \$40 billion program extended without Congressional authorization or a transparent and public analysis of its potential impact on the Medicare program and its beneficiaries. While we are cognizant of the critical need of Medicare providers during the COVID-19 pandemic, CMS's lack of transparency with Congress, and the seeming lack of consideration or concern for the integrity of the HI and the SMI Trust Funds are deeply troubling. The Medicare Trust Funds are not the Administration's personal piggybank—they are taxpayer funds that are to be used for a specific purpose.

Additionally, we are bewildered by CMS's decision to use the SMI Trust Fund in this manner, when Congress appropriated \$175 billion through the Provider Relief Fund, through the CARES Act and the Paycheck Protection Program Health Care Enhancement Act (P.L. 116-139). It is our understanding that the Department of Health and Human Services (HHS or Department) has not yet spent all of these funds. It is unclear if the Department or CMS has conducted an analysis to understand the overlap between these programs, and the extent to which providers have benefitted from both programs. We note that the questions on this exact issue from the May 7, 2020 letter remain unanswered.<sup>4</sup> The Department's lack of coordination with CMS during the pandemic is troubling and indicative of this Administration's lack of coordination and leadership throughout the COVID-19 response.

We have additional concerns regarding CMS's continued lack of communication and transparency with providers regarding when these payments are to be repaid. For providers, the terms of AAP require new Medicare revenue to be held in abeyance until the provider repays the amount in full. CMS has neither begun the recoupment process nor signaled to providers when it might do so. With little to no recent information from HHS about this program, AAP recipients are understandably anxious about their obligations to CMS and confused as to the timing.

While we anticipate providing statutory clarity around this issue in the Continuing Resolution, we are disappointed at the lack of communication to Congress and to providers on these matters. These legislative changes are not an excuse for CMS to decline to communicate with providers about what they are to expect with respect to their repayment obligations in the

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<sup>3</sup> Letter from Rep. Frank Pallone, Jr., Chairman, House Committee on Energy and Commerce, and Rep. Richard E. Neal, Chairman, House Committee on Ways and Means, to Secretary of Health Human Services Alex M. Azar II and Centers for Medicare and Medicaid Services Administrator Seema Verma (May 7, 2020) ([energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/HHS.CMS\\_.%202020.0.5.7.pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/HHS.CMS_.%202020.0.5.7.pdf)).

<sup>4</sup> See note 3.

upcoming months. Failure to do so makes it difficult for providers to project future financial circumstances and ensure they can deliver quality patient care.

In times as trying as these, the American people and our health care providers deserve as much certainty from all branches of the federal government as we are able to provide. To that end, please provide the following information and responses to our questions with respect to the AAP program by October 2, 2020:

1. Was the Office of the Actuary consulted before CMS decided to expand the Part A Accelerated Payments Program and the Part B Advance Payments Program, per the Fact Sheet: Expansion of the Accelerated and Advance Payments Program for Providers and Suppliers During COVID-19 Emergency?<sup>5</sup> Did OACT conduct an analysis of these expansions, the projected impact on Part B premiums in 2021, and the projected impact on future balances of the HI Trust Fund? If such analyses were conducted, please provide such analyses.
2. The to-date and complete accounting for AAP funds distributed from the HI and SMI Trust Funds, including any repayments received from AAP eligible entities.
3. The to-date and complete accounting of any funds borrowed from the HI Trust Fund to make Part B payments to Part A providers, and the status of the reconciliation of those funds to the HI Trust Fund.
  - a. Did the agency conduct any legal analyses on whether it would be permissible to make payments to Part A providers on their Part B claims from the HI Trust Fund? Please provide a response in writing. If so, please provide copies of such analyses.
4. Information on any future changes CMS intends to make to AAP eligibility, payment amounts, and/or repayment terms, and whether the Administration intends to resume making new payments under the AAP program as expanded by the CARES Act and CMS<sup>6</sup> during the COVID-19 public health emergency.
5. The processes the agency intends to undertake for repayment of AAP payments, including specific processes for recouping/reconciliation and notifying providers of recoupment deadlines and obligations.
6. A list of all providers who have received payments, and the dates that such payments were made. Such list should include for each provider or supplier:

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<sup>5</sup> Centers for Medicare and Medicaid Services, *FACT SHEET: EXPANSION OF THE ACCELERATED AND ADVANCE PAYMENTS PROGRAM FOR PROVIDERS AND SUPPLIERS DURING COVID-19 EMERGENCY* ([www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf](http://www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf)).

<sup>6</sup> Centers for Medicare and Medicaid Services, *FACT SHEET: EXPANSION OF THE ACCELERATED AND ADVANCE PAYMENTS PROGRAM FOR PROVIDERS AND SUPPLIERS DURING COVID-19 EMERGENCY* ([www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf](http://www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf)).

- a. Whether the payment was made through the Advance Payment Program or Accelerated Payment Program;
- b. The providers' CMS certification number or other appropriate number;
- c. The amount of the payment to each provider or supplier;
- d. Information on the total percentage of applicable claims over the applicable period that the loan represents;
- e. Information on the status of any repayment or recoupment of AAP via Medicare payment offsets currently underway;
- f. Whether the provider or supplier is eligible to receive additional payments through either program; and
- g. Whether the provider or supplier has received funding through the Provider Relief Fund, and if so, in what amount.

We look forward to receiving this information so that we can conduct the business the American people expect of us.

Sincerely,



Richard E. Neal  
Chairman  
House Committee on Ways and Means



Frank Pallone, Jr.  
Chairman  
House Committee on Energy and Commerce



Ron Wyden  
Chairman  
Senate Finance Committee