Seeking a lifeline: COVID-19 loans, advance payments on offer, but watch terms

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Effective Apr 9, 2020

Published Apr 13, 2020
Last Reviewed Apr 9, 2020

Under the COVID-19 emergency, there are multiple opportunities for financially impacted Medicare providers to get money from government agencies or associated banks — either as loans or as an advance on their reimbursements. But while the application process for these programs tends to be simple, stay alert to some issues that could make trouble for you when it comes time to sign the contract or to pay them back.

You've probably heard about the $100 billion earmarked for providers affected by the pandemic in the CARES Act signed into law by President Trump on March 27 (PBN 4/6/20). As of this writing, no concrete guidance has been issued by the federal government for disbursement of those funds. But CMS and the Small Business Administration (SBA) have made other arrangements to get money in the hands of providers, such as those recently interviewed by Part B News whose practices have incurred heavy financial losses from infection control requirements and the postponement of nearly all elective services and procedures (PBN 4/6/20).

Tap into advanced CMS payments

CMS has authorized its Medicare administrative contractors (MACs) to advance payments to providers, suppliers and other Medicare entities via the Accelerated and Advanced Payment Program (APP). Per the CMS fact sheet, Part B providers are eligible to receive an advance payment on up to three months' worth of their usual Part B payments, to be paid back to CMS within 120 days of the loan date.

Note that Part A providers and Part B suppliers are also eligible, but with a 210-day window to pay back.

Applications available via the MACs may differ from one another cosmetically but have uniformly simple terms. Each consists of a single page in which you give your Medicare information; attest that you need the money because of a "delay in provider/supplier billing process" that is "of an isolated temporary nature beyond the provider/supplier's normal billing cycle due to COVID-19 and not attributable to other third-party payers or private patients"; and declare that you either want the three-months' worth of advance reimbursement or a lesser amount that you can request.

The MACs are supposed to handle the claim within seven days, during which time they'll ascertain whether you meet other qualifying conditions, including that you:

- Have billed Medicare for claims within 180 days immediately prior to the date of signature on the provider's or supplier's request form.
- Are not in bankruptcy.
- Are not under active medical review or program integrity investigation.
- Do not have any outstanding delinquent Medicare overpayments.

What's the downside?

Unlike loans, these advances come with no interest rate. After the 120-day deadline "every claim submitted by the provider/supplier will be offset from the new claims to repay the accelerated/advanced payment," CMS says. That goes until the advance is worked off.

But Marcie M. Damisch, an attorney and shareholder with Stradling, Yocca, Carlson & Rauth in Denver, cautions that you should consider a possible reason to pass — namely, if you aren't sure you can pay it back timely, it might cause you more trouble than other kinds of cash advances.

If you can't meet the timeline, it "could have an adverse impact on a provider's long-term ability to continue to participate with Medicare," Damisch says. For example, "while the current COVID-19 situation is unprecedented, guidance from CMS indicates that it could seek an overpayment determination to recover any unpaid balances. Such a determination could result in a provider being denied enrollment in Medicare until the overpayment is resolved (PBN 3/21/16)."

Example: If a provider's practice is "struggling a bit financially prior to the COVID-19 pandemic," or they have other reasons to suspect they won't bounce back well from it, they might want to reconsider, or at least ask for a smaller amount, advises Margarita Christoforou, a lawyer and associate in the health services practice group at Rivkin Radler in Uniondale, N.Y. "After all, this has to be repaid! And at this time, there's no indication CMS intends to forgive the advances made pursuant to the program," Christoforou says.

"Thus, medical practices should consider both their short-term and long-term cash flow needs and projected patient volume in evaluating whether they can absorb the reduction to future cash flows that will result from the recoupment of the advanced amounts," Damisch says.

SBA offers low rates and forgiveness, maybe

You may want to consider, either in addition to the advanced payment model or in place of it, a new program from the Small Business Association (SBA). That's the Paycheck Protection Program authorized by the CARES Act and expanded on in the interim final rule that SBA issued April 2. These loans from banks participating in the SBA 7(a) program at 1% interest for two years are available to small businesses, i.e., those with fewer than 500 employees, and some with more employees that meet certain SBA standards. That includes medical practices. Applicants must have been in business on Feb. 15, 2020, and must provide some basic business documentation.

Overall, the SBA program has $349 billion to give away. There is a payroll-based formula that determines how much you can borrow; the ceiling is $10 million per borrower. And it's first-come, first-served. When the $349 billion runs out — or June 30, 2020, whichever comes first — that's it. Applications are being accepted now.

Along with the easy application and low interest rate, the program has the advantage of offering forgiveness for potentially the whole amount of the loan. The actual amount of forgiveness is mainly based on your payroll expenditures. A U.S. Treasury explainer says the loan "will be fully forgiven when used for payroll costs, interest on mortgages, rent and utilities (due to likely high subscription, at least 75% of the forgiven amount must have been used for payroll)."

The application is simple, but be warned: Due in part to the speed with which the law and the rule were written, the terms of these loans are not entirely clear and are in controversy among observers, including banks authorized to make the loans, says Robert H. Iseman, a partner in the health services practice group at Rivkin Radler in Albany, N.Y.

After the rule was issued, "some banks said they hadn't gotten enough guidance and wouldn't make the loans," Iseman adds. "Some said they'd limit them to existing customers... And some had their own, varying model worksheets for how to compute the borrower's payroll costs. The SBA application is simple, but [the] devil is in the details and there's been a lot of confusion. For example, the statute says you figure the average of your costs based on the 12 months before the loan originates. But the application says, use your 2019 costs — which is not in the law!"

Iseman recommends that you "work with your advisors to fill out the form in good faith and remember that how you resolve the ambiguities may affect your ability to have the loan forgiven — and watch for guidance [from SBA] because it changes day by day."

Also, Iseman says, small businesses are flocking to the program, so "get in the queue as soon as you can."

Alternatives to consider

Keep your eyes peeled for other COVID-related loan programs available to practices and other businesses. For example, medical practices located in states in which a disaster declaration has been approved may be eligible for Economic Injury Disaster Loans (EIDL) from the SBA, Damisch says.

"These loans offer up to $2 million in funding and may be used to pay fixed debts, payroll, accounts payable and other bills," Damisch explains. "These loans are being offered with long-term repayment periods, up to 30 years, with interest rates of 3.75% for small businesses and 2.75% for non-profit entities."

There's also the possibility, if you've scaled back your patient load in response to COVID-19, of reducing your insurance burden. "If your practice will operate on limited hours for a period of time, contact your insurer," says Todd Zeiter, vice president, national underwriting at The Doctors Company, a physician-owned medical malpractice insurer in Napa, Calif. "It may be appropriate to lower your medical professional liability premium to reflect an altered risk profile."

"Many of our surgeons are postponing elective surgeries, or not performing any surgery whatsoever related to their practice, again related to the COVID-19 pandemic, and as such present a lower risk profile than that originally contemplated in their premium," Zeiter says. "If the exposure decreases, the premium we charge may decrease. Almost all contracts can be modified by endorsement, amendment or addendum, and under our contract we would modify terms via an endorsement."

Resources:

- Accelerated and Advanced Payment Program (APP) fact sheet: www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf

- Business Loan Program Temporary Changes; Paycheck Protection Program: https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf
- Paycheck Protection Program Borrower Application Form: www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf
- EIDL application: www.SBA.gov/disaster