

March 26, 2020

The Honorable Alex Azar II  
Secretary  
U.S. Department of Health & Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
US Department of Health & Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

### **Stabilizing Provider Revenue During COVID-19 Public Health Emergency**

Dear Secretary Azar and Administrator Verma:

The undersigned organizations write to urge the Department of Health & Human Services (HHS) to immediately begin making **periodic interim payments to healthcare providers**. Providers on the frontlines of the COVID-19 pandemic are providing care to the growing population of individuals infected, while also maintaining access to care for those patients who are not infected but require ongoing care for their health conditions. Today, providers are facing severe and growing financial difficulties.

Healthcare facilities are responding to the crisis by training additional staff, increasing staffing levels, constructing or retrofitting facilities and expanding telehealth capabilities. Additionally, hospitals following CMS' recommendations to postpone elective surgeries, and non-essential surgical and other medical procedures will see significant decreases in revenue. In anticipation for the coming onslaught of both suspected and diagnosed COVID-19 cases, we've heard from some hospitals that they are already experiencing up to a 40 percent decrease in services. Moreover, there are additional challenges decreasing provider revenue as downstream contracted services (e.g. billing services) cease operations.

Physicians and other clinicians are facing similar financial stresses as cancellation rates have more than doubled. Many physicians and other clinicians have moved a large portion of their practice to virtual platforms. The increased flexibility in telehealth provided by CMS and commercial payers has been foundational in providing the means to extend care to vulnerable populations in a manner that protects them from unwarranted exposure; however, there is an implementation lag. As physicians and other clinicians face growing financial difficulties, they will be forced to make operational decisions in the next two to six weeks that could jeopardize access to care for their patients and the communities they serve.

We believe these unprecedented times call for unprecedented action by CMS. Under section 553(b)(B) of the APA, the Secretary may waive the requirement to engage in notice and comment rulemaking to change a regulation when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. In this instance, we believe the COVID-19 public health emergency provides good cause for waiving notice and comment rulemaking when doing so will provide immediate relief to hospitals and physicians.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748) provides additional authority for the Secretary to make such payments to hospitals. However, we believe such payments should be made to all providers. As periodic interim payments (PIP) currently exist in regulation (42 CFR 413.64(h)), we believe the Secretary should use his authority (under Section 553(b)(B) of the Administrative Procedures Act (APA) and section 1871(b)(2)(C) of the Social Security Act) to waive the notice and comment rulemaking requirement to adjust the current periodic interim payment regulations (42 CFR 413.64(h)) as follows:

- Expand the applicability to all providers (i.e. facilities and clinicians) and all Part A and B services
- Establish a simple streamlined process for all providers to opt-in to receive periodic interim payments
- Set the maximum amount of the PIP to be the total amount of payment collected by the provider during the same time period in the preceding year (e.g. if April 2019 payment was \$10,000 then April 2020 PIP would be \$10,000)
- Allow longer fixed payment intervals of one-month to two-quarters
- Permit providers to elect a reduced PIP to reduce liability during the reconciliation process (e.g. if April 2019 payments were \$10,000 a provider could elect a 25 percent reduction and receive a PIP of \$7,500)
- Waive the requirement that to stay on PIP a provider must submit 85 percent of clean claims within 30 days
- If the public health emergency spans multiple calendar years, the PIP amount shall not exceed the total amount of revenue collected by the facility during the same time period in the most recent calendar year prior to the start of the public health emergency
- Conduct reconciliation after the conclusion of the public health emergency and provide a reconciliation period of at least two years to allow opportunity for provision of services to be captured in the adjustment
- Exclude any payments that are directly related to testing and provision of care for confirmed and suspected COVID-19 from the reconciliation

We recognize that CMS' view is generally that policy and procedures on advance and accelerated payments are made with the expectation that bills will be used to offset the advance payments not to compensate hospitals for lost revenues due to a decrease in non-

emergent services. However, we believe it is imperative for the Secretary to rapidly adjust and expand periodic interim payments, ensuring caregivers on the front lines are receiving comparable levels of funding and are able to continue providing care.

We believe that many providers will not be able to fully reconcile their periodic payments after the conclusion of the public health emergency. Accordingly, we have asked Congress to provide the Secretary authority to adjust the periodic interim payment reconciliation approaches, allowing no or reduced reconciliation. Additionally, CMS can use the funding provided in CARES Act to reduce the amount owed in reconciliation. We also encourage the Secretary to allow states to adopt similar measures under Medicaid and make available some or all of the CARES funds to waive reconciliation requirements, notwithstanding any otherwise applicable Medicaid payment limits. Finally, we urge CMS to direct Medicare Advantage plans to implement PIP payments for providers.

We would appreciate discussing with you how to implement this recommendation across provider types. Thank you for your consideration of how to ensure providers can continue to provide care during this national crisis.

Sincerely,

Aledade  
American Academy of Family Physicians  
America's Essential Hospitals  
American Medical Group Association  
America's Physician Groups  
Association of American Medical Colleges  
Catholic Health Association of the U.S.  
National Rural Health Association  
Premier Inc.