

116TH CONGRESS
2D SESSION

S. 3750

To amend title XVIII of the Social Security Act to modify the accelerated and advance payment programs under parts A and B of the Medicare program during the COVID–19 emergency.

IN THE SENATE OF THE UNITED STATES

MAY 14, 2020

Mrs. SHAHEEN (for herself, Mr. BENNET, Ms. SMITH, Ms. CORTEZ MASTO, Ms. HASSAN, Mr. JONES, Mr. REED, Mr. BLUMENTHAL, Mr. HEINRICH, Mr. MANCHIN, Mr. DURBIN, Ms. KLOBUCHAR, Ms. WARREN, Ms. ROSEN, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to modify the accelerated and advance payment programs under parts A and B of the Medicare program during the COVID–19 emergency.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Accelerated
5 and Advance Payments Improvement Act”.

1 **SEC. 2. MODIFYING THE ACCELERATED AND ADVANCE PAY-**
2 **MENT PROGRAMS UNDER PARTS A AND B OF**
3 **THE MEDICARE PROGRAM DURING THE**
4 **COVID-19 EMERGENCY.**

5 (a) SPECIAL REPAYMENT RULES.—

6 (1) PART A.—Section 1815(f)(2)(C) of the So-
7 cial Security Act (42 U.S.C. 1395g(f)(2)(C)) is
8 amended to read as follows:

9 “(C) In the case of an accelerated payment
10 made under such program on or after the date of
11 the enactment of the CARES Act and so made dur-
12 ing the emergency period described in section
13 1135(g)(1)(B)—

14 “(i) such payment shall be treated as if
15 such payment were made from the General
16 Fund of the Treasury;

17 “(ii) upon request of the hospital, the Sec-
18 retary shall—

19 “(I) provide 1 year before claims are
20 offset to recoup such payment;

21 “(II) provide that any such offset of a
22 claim to recoup such payment shall not ex-
23 ceed 25 percent of the amount of such
24 claim; and

25 “(III) allow not less than 2 years
26 from the date of the first accelerated pay-

1 ment before requiring that the outstanding
2 balance be paid in full; and

3 “(iii) the Secretary may waive the require-
4 ment that such payment be repaid (or re-
5 couped) if, not earlier than 2 years from the
6 date of the first accelerated payment, the hos-
7 pital submits to the Secretary a request for
8 such waiver containing such information that
9 demonstrates that—

10 “(I) requiring repayment of such pay-
11 ment (or recouping such payment) would
12 constitute an extreme hardship for the hos-
13 pital;

14 “(II) the hospital made efforts to
15 maintain a comparable number of employ-
16 ees at a comparable level of pay during the
17 such emergency period compared to the
18 number of, and level of pay for, such em-
19 ployees as of the day before the beginning
20 of such period; and

21 “(III) the hospital did not increase ex-
22 ecutive compensation or undertake any
23 stock buyback, if applicable, during such
24 emergency period.”.

25 (2) PART B.—

1 (A) CONTINUING CONDUCT OF ADVANCE
2 PAYMENT PROGRAM.—Notwithstanding any
3 other provision of law, the Secretary of Health
4 and Human Services shall carry out the pro-
5 gram described in section 421.214 of title 42,
6 Code of Federal Regulations (or a successor
7 regulation) for the duration of the emergency
8 period described in section 1135(g)(1)(B) of the
9 Social Security Act (42 U.S.C. 1320b-
10 5(g)(1)(B)).

11 (B) REPAYMENT RULES.—In carrying out
12 such program, in the case of a payment made
13 under such program on or after the date of the
14 enactment of the CARES Act (Public Law
15 116–136) and so made during the emergency
16 period described in section 1135(g)(1)(B) of the
17 Social Security Act (42 U.S.C. 1320b-
18 5(g)(1)(B)), the Secretary of Health and
19 Human Services—

20 (i) shall treat such payment as if such
21 payment were made from the General
22 Fund of the Treasury;

23 (ii) upon request of the entity receiv-
24 ing such payment, shall—

1 (I) provide 1 year before claims
2 are offset to recoup the payment;

3 (II) provide that any such offset
4 of a claim to recoup such payment
5 shall not exceed 25 percent of the
6 amount of such claim; and

7 (III) allow not less than 2 years
8 from the date of the first advance
9 payment before requiring that the
10 outstanding balance be paid in full;
11 and

12 (iii) may waive the requirement that
13 such payment be repaid (or recouped) if,
14 not earlier than 2 years from the date of
15 the first advance payment, the entity sub-
16 mits to the Secretary a request for such
17 waiver containing such information that
18 demonstrates that—

19 (I) requiring repayment of such
20 payment (or recouping such payment)
21 would constitute an extreme hardship
22 for the entity;

23 (II) the entity made efforts to
24 maintain a comparable number of em-
25 ployees at a comparable level of pay

1 during the such emergency period
2 compared to the number of, and level
3 of pay for, such employees as of the
4 day before the beginning of such pe-
5 riod; and

6 (III) the entity did not increase
7 executive compensation or undertake
8 any stock buyback, if applicable, dur-
9 ing such emergency period.

10 (b) INTEREST RATES.—

11 (1) PART A.—Section 1815(d) of the Social Se-
12 curity Act (42 U.S.C. 1395g(d)) is amended by in-
13 serting before the period at the end the following:
14 “(or, in the case of such a determination made with
15 respect to a payment made on or after the date of
16 the enactment of the CARES Act and during the
17 emergency period described in section 1135(g)(1)(B)
18 under the program under subsection (e)(3), at a rate
19 of 1 percent)”.

20 (2) PART B.—Section 1833(j) of the Social Se-
21 curity Act (42 U.S.C. 1395l(j)) is amended by in-
22 serting before the period at the end the following:
23 “(or, in the case of such a determination made with
24 respect to a payment made on or after the date of
25 the enactment of the CARES Act and during the

1 emergency period described in section 1135(g)(1)(B)
2 under the program described in section 421.214 of
3 title 42, Code of Federal Regulations (or a successor
4 regulation), at a rate of 1 percent)”.
5

(c) REPORT.—

(1) REPORTS DURING COVID-19 EMERGENCY.—

6 Not later than 2 weeks after the date of the enact-
7 ment of this section, and every 2 weeks thereafter
8 during the emergency period described in section
9 1135(g)(1)(B) of the Social Security Act (42 U.S.C.
10 1320b-5(g)(1)(B)), the Secretary of Health and
11 Human Services shall submit to the Committee on
12 Ways and Means and the Committee on Energy and
13 Commerce of the House of Representatives, and the
14 Committee on Finance of the Senate, a report that
15 includes the following:
16

17 (A) The total amount of payments made
18 under section 1815(e)(3) of the Social Security
19 Act (42 U.S.C. 1395g(e)(3)) and under the pro-
20 gram described in section 421.214 of title 42,
21 Code of Federal Regulations (or a successor
22 regulation) during the 2-week period preceding
23 the date of the submission of such report.

24 (B) The number of entities receiving such
25 payments during such period.

1 (C) A specification of each such entity.

2 (2) REPORTS AFTER COVID-19 EMERGENCY.—

3 (A) IN GENERAL.—Not later than 6
4 months after the termination of the emergency
5 period described in paragraph (1), and every 6
6 months thereafter until all specified payments
7 (as defined in subparagraph (B)) have been re-
8 couped or repaid, the Secretary of Health and
9 Human Services shall submit to the Committee
10 on Ways and Means and the Committee on En-
11 ergy and Commerce of the House of Represent-
12 atives, and the Committee on Finance of the
13 Senate, a report that includes the following:

14 (i) The total amount of all specified
15 payments that have been recouped or re-
16 paid.

17 (ii) The total amount of all specified
18 payments that have been recouped or re-
19 paid.

20 (iii) The amount of interest that has
21 accrued with respect to all specified pay-
22 ments.

23 (B) SPECIFIED PAYMENTS.—For purposes
24 of subparagraph (A), the term “specified pay-
25 ments” means all payments made under section

1 1815(e)(3) of the Social Security Act (42
2 U.S.C. 1395g(e)(3)) or under the program de-
3 scribed in section 421.214 of title 42, Code of
4 Federal Regulations (or a successor regulation)
5 made on or after the date of the enactment of
6 the CARES Act (Public Law 116–136) during
7 the emergency period described in such sub-
8 paragraph.

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