

June 1, 2020

VIA REGULATIONS.GOV FILING

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS 1744-IFC
P.O. Box 8016
Baltimore, MD 21244-8016

RE: Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency

The American Association of Hip and Knee Surgeons (“AAHKS”) appreciates the opportunity to submit comments to the Centers for Medicare & Medicaid Services (“CMS”) on its interim final rule with comment period (“IFC”) to give Medicare providers needed flexibilities to respond effectively to the serious public health threats posed by the spread of the 2019 Novel Coronavirus (“COVID-19”).

AAHKS is the foremost national specialty organization of more than 4,000 physicians with expertise in total joint arthroplasty (“TJA”) procedures. Many of our members conduct research in this area and are experts on the evidence based medicine issues associated with the risks and benefits of treatments for patients suffering from lower extremity joint conditions. AAHKS is guided by its three principles:

- Payment reform is most effective when physician-led;
- The burden of excessive physician reporting on metrics detracts from care; and
- Patient access, especially for high-risk patients, and physician incentives must remain a focus.

I. Changes to the Comprehensive Care for Joint Replacement (CJR) Model To Extend the Length of Performance Year 5 by Three Additional Months (Sec. II.Q.2)

CMS will extend the CJR Performance Year (“PY”) 5 by three months. Rather than ending on December 31, 2020, PY 5 will end on March 31, 2021. CMS believes the extension will help reduce additional disruptions to the standard care procedures hospitals have in place during the public health emergency.

AAHKS Comment: We support the CMS policy to extend CJR PY 5 through March 2021. Deferring transition to revised model operations in the midst of a pandemic will avoid additional

disruptions and burdens on participating hospitals and associated providers that would provide no meaningful benefit at this time. The three-month extension is a good first start.

However, it is too early to know whether a three-month extension is long enough. Though guidelines have laid out a process for regions and facilities to determine when to re-open elective procedures, the progression of the COVID-19 pandemic may continue to severely impact elective procedures well into 2021 as new regions become “hotspots” or original regions experience a “second wave.” We request that the current CJR model standards continue through all of 2021 until hospitals can give their full attention to transitioning to a new model. In this case, CMS would make a regulatory change to add a PY 6 to the current CJR model. Such an extension is warranted by the pandemic and the uncertainty surrounding its progression. In addition, it would further reduce confusion and administrative burden for participant hospitals if the ultimate transition did not occur in the middle of a calendar year.

II. Changes to the CJR Extreme and Uncontrollable Circumstances Policy To Account for the COVID-19 Pandemic (Sec. II.Q.2)

The CJR Program currently has in place an Extreme and Uncontrollable Circumstances policy, wherein participating hospitals have their actual episode payments capped at their target prices for fracture and non-fracture episodes. Up to now, this Extreme and Uncontrollable Circumstances policy has only applied to facilities operating within an area of a Disaster Declaration (FEMA designation for natural disasters, such as, hurricanes, earthquakes, wildfires) and therefore does not cover hospitals impacted by the COVID-19 pandemic.

To mitigate the adverse impact under the CJR of the nation-wide suspension in elective procedures, CMS has broadened its Extreme and Uncontrollable Circumstances policy to cover facilities within an emergency area for episodes that overlap with the emergency period. This includes the current March 13, 2020 Presidential declaration of a COVID-19 National Emergency.

Specifically, under the policy, for a fracture or non-fracture episode with a date of admission to the anchor hospitalization that is on or within 30 days before the date that the emergency period begins or that occurs through the termination of the emergency period, actual episode payments are capped at the target price determined for that episode. In the present case, this policy applies to all CJR participants nationwide.

AAHKS Comment: We support the change to the Extreme and Uncontrollable Circumstances Policy. Anything less would financially penalize many participating hospitals at a time of cash liquidity crisis for factors outside their control. We ask CMS to confirm that this policy has been applied to all fracture or non-fracture episodes with admissions of February 11, 2020 or later.

We also believe CMS must consider broader actions to hold CJR participants harmless from longer-term impacts from the COVID-19 pandemic. When the national emergency ends and the Extreme and Uncontrollable Circumstances Policy ends with it, participant hospitals will

likely still be experiencing an increased demand for elective TJA procedures from a patient population whose conditions may have deteriorated during the suspension of elective procedures and stay-at-home orders. The potential impacts on CJR performance measures is difficult to predict other than that the end of the national emergency declaration does not mean that health care operations have returned to normal. Therefore, CMS should consider the long-term impact on performance measures and baselines arising out of COVID-19 for future performance years.

AAHKS appreciates your consideration of our comments. If you have any questions, you can reach Mike Zarski at mzarski@aahks.org or Joshua Kerr at jkerr@aahks.org.

Sincerely,

C. Lowry Barnes, MD
President

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Executive Director

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