
MEMORANDUM

To: AAHKS

From: Epstein Becker & Green, P.C.

Date: December 28, 2020

Re: **Interim Final Rule with Request for Comment – Summary of Section G. “Updates to the Comprehensive Care for Joint Replacement (CJR) Model, Performance Year (PY) 5 During the COVID–19 Public Health Emergency”**

On November 6, 2020, the Centers for Medicare & Medicaid Services (“CMS”) released an Interim Final Rule with requests for comments (“IFC”) that—in addition to discussing Medicare coverage of COVID tests and vaccines under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act—makes four changes to the Comprehensive Care for Joint Replacement (“CJR”) Model. AAHKS commented on some of these changes in June 2020 after CMS proposed them in April. Other changes in the IFC are new proposals.

The following summarizes these four changes to the CJR program and indicates areas where CMS seeks comment. The IFC went into effect on November 2, 2020, but CMS will accept feedback and comments until January 4, 2020.

I. CMS extended CJR Performance Year (“PY”) 5 until September 30, 2021, and seeks comments on the schedule for PYs 6 to 8

CMS extended the PY5 by an additional 6 months to end on September 30, 2021, to provide for continuity of model operations during the COVID-19 pandemic and to give CMS more time to consider comments on how to extend CJR into years 6 through 8. This extension—combined with the previous three-month extension in response to COVID-19 in April 2020—results in an overall nine-month extension from the PY5’s original December 31, 2020, expiration date established by the original CJR rule in November 2015. CMS believes the additional extension will provide participant hospitals with relief and stability for model operations and will reduce standard care procedure disruptions during the continuing public health emergency.

CMS seeks comments on its proposal of extending PY5. Because the IFR now amends PY5 to comprise all CJR episodes ending on or after January 1, 2020, and on or before September 30, 2021, CMS seeks comment on the duration of PY 6, if finalized, and specifically:

1. The potential for PYs 6 through 8 to remain 12-month performance years and to each begin with episodes ending on or after October 1 each year; or
2. Increasing the duration of proposed PY 6 to 15 months where PY 6 would comprise all CJR episodes ending on or after October 1, 2021 and on or before December 31, 2022. PY

7 and PY 8 would remain 12 months and each begin with episodes ending on or after January 1, 2023 or January 1, 2024, respectively.

II. CMS modified the reconciliation process for PY5 to allow for two periods to enable more frequent receipt of reconciliation reports by participants

CMS will conduct two initial, and two final, reconciliations of PY5. The first initial reconciliation will apply to the first 12 months of PY5 in order to maintain consistency with the 12 month reconciliation cycles for previous PYs 2-4, and the second initial reconciliation will apply to the remaining 9 months of PY5. CMS believes that the 21-month gap that hospitals would experience between the PY4 final reconciliation in June of 2020 and the initial PY 5 reconciliation in early 2022 are good cause for the change. For CJR quality measures to which an earlier COVID-19 waiver provided certain reporting exemptions, CMS will use quality data reported before and after the effective dates of the public health emergency. The two PY5 performance periods—spanning January 1, 2020, through September 30, 2021—are as follows:

Performance year (PY)	Performance period	Initial reconciliation calculation start	Subsequent reconciliation calculation start	Reconciliation amount (+/-)
Subset 5.1	01/01/2020 to 12/31/2021	2 months after 12/31/2020: Late February 2021	14 months after 12/31/2020: Late February 2022	Net PY4 and PY5.1 reconciliation amounts.
Subset 5.2	01/01/2021 to 09/30/2021	5 months after 09/30/2021: Late February 2022	17 months after 09/30/2021: Late February 2023	Net PY5.1 and PY5.2 reconciliation.

Recall, CMS earlier removed downside risk for CJR participants by capping actual episode payments at the target price for episodes with a date of admission to the anchor hospitalization between Jan. 31, 2020 through the termination of the public health emergency.

III. CMS made technical changes retroactive to October 1, 2020, to add new DRG 521 and DRG 522 codes to ensure that the CJR model continues to include the same inpatient LEJR procedures and updated the quality adjusted target prices

Earlier in 2020, CMS proposed and finalized the creation of two new MS-DRGs for the Medicare Inpatient Prospective Payment Systems (“IPPS”): DRG 521 (Hip Replacement with Principal Diagnosis of Hip Fracture with MCC); and DRG 522 (Hip Replacement with Principal Diagnosis of Hip Fracture, without MCC). AAHS provided the following comment:

If CMS finalizes the new DRGs for hip fractures without adding the new codes as episode triggers to the CJR, it would have the effect of removing all hip fracture cases from the CJR. We believe there is value in maintaining hip fracture cases in the CJR. First, notwithstanding the new codes, it would still be administratively simpler for CJR participants and associated surgeons to continue performing hip fracture THAs under CJR arrangements than to begin

removing cases from the CJR. Second, maintaining hip fractures in the CJR would mean those procedures remain subject to the value-based care incentives of the CJR.

In response to such comments, CMS has added DRGs 521 and 522 into the CJR model episode definition, retroactive to October 1, 2020 when the new codes became effective. CMS made the change retroactively to avoid dropping approximately 20-25% of all LEJR episodes from the CJR model.

IV. CMS modified the extreme and uncontrollable circumstances policy to expire on the earlier of March 31, 2021 or the last day of the COVID-19 public health emergency period, and adopted a more targeted adjustments to account for COVID-19 diagnoses

Earlier in the pandemic, CMS' extreme and uncontrollable circumstances adjustment for COVID-19 provided financial safeguards for participant hospitals, wherein actual episode payments were capped at the target price determined for that episode through the end of the public health emergency, effectively waiving downside risk for participants during the pandemic.

CMS has modified this policy to expire on the earlier of either March 31, 2021, or the last day of the emergency period, to adapt to an increase in CJR episode volume. CMS stated that the previous broad policy that extended without an end date threatened the ability of the CJR model to generate savings after Medicare claims data indicated an unanticipated increase in new CJR episodes after April 2020 when elective surgeries resumed.

Instead, CMS is adapting a more limited adjustment that will apply indefinitely. Namely, CMS will identify episodes with actual episode payments with any claim containing a COVID-19 diagnosis and will cap costs for those episodes at the quality adjusted target price, effectively waiving downside risk only for such episodes.
