

PUBLICATION

CMS Cancels EPM and Cardiac Rehabilitation Incentive Program While Revising CJR in New Proposed Rule

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After initially delaying the implementation of Episode Payment Models (EPMs) earlier this year, CMS issued a Proposed Rule on August 17 that proposes to cancel all EPMs and the Cardiac Rehabilitation Incentive Program (CR) while proposing substantial revisions to the Comprehensive Joint Replacement Model (CJR). Most notably for current CJR participant hospitals, CMS proposes to make participation optional for a number of hospitals who were initially required to participate. *The deadline to submit comments on the Proposed Rule is October 16.*

For the history and background on the rulemaking process behind the EPMs and the CR, see Baker Donelson's Health Law Alert articles:

- [Proposed Cardiac, Hip and Femur Episode Payment Models Are Next Generation from BPCI and CJR, New Bundled Payments Are a Go... for Now;](#)
- [Delayed ETA for EPM's – CMS Delays New Bundled Payment Models;](#) and
- [Start Date Delayed for EPM, Cardiac Rehabilitation and CJR Episodes of Care.](#)

The Proposed Rule cites broad opposition from commenters to mandatory participation in bundled payment programs, and CMS acknowledges in the preamble that they received extensive feedback from stakeholders in opposition to mandatory participation throughout the rulemaking process. Although CMS once heralded mandatory participation in certain bundled payment programs as a key defining feature of those programs, mandatory participation is now, in light of the Proposed Rule, on the chopping block.

Along with canceling the EPMs and the CR, the Proposed Rule makes several changes to CJR, CMS's first mandatory bundled payment program. The Proposed Rule intends to reduce the number of hospitals required to participate in CJR from approximately 700 to 393 by selecting approximately half of the Metropolitan Statistical Areas (MSAs) that CMS originally slated for inclusion. In reducing the number of MSAs, CMS selected MSAs with the highest average for wage-adjusted historic episode payments for lower extremity joint replacements. CMS believes this methodology results in "more expensive MSAs" in the CJR model that are "most likely to have significant room for improvement in creating efficiencies."

Out of the original 67 MSAs, CMS proposes under the new guidelines in the Proposed Rule that 34 MSAs will remain required to participate in CJR and the remaining 33 MSAs will now fall into a new category of "CJR voluntary participation MSAs." As the name implies, CMS will no longer require hospitals to participate in CJR if they are within the 33 MSAs designated as "CJR voluntary participation MSAs." Additionally, CMS is proposing to exclude hospitals that qualify as low-volume hospitals and/or rural hospitals in the 34 MSAs that require mandatory participation in CJR. The Proposed Rule contains several tables listing the mandatory and voluntary participation MSAs and the eligible low-volume hospitals within mandatory MSAs.

The effective date for exclusion from CJR for hospitals eligible to do so is February 1, 2018, unless they "opt-in" to remain in CJR. CMS explains that the opt-in process is a voluntary election and will consist of a written "participation election letter" that CMS will provide in a template format at a later date. The "opt-in" must occur

by February 1, 2018; otherwise, CMS will exclude those hospitals automatically from participating in the remaining performance years of the CJR program.

Interestingly, CMS is seeking comments on ways to "further incentivize eligible hospitals" in the CJR model, including those hospitals that are newly eligible for voluntary participation. CMS goes on to mention the gainsharing cap, specifically, that is currently a part of the CJR program. The gainsharing cap limits the gainsharing payments to a CJR collaborator to 50 percent of the total Medicare Physician Fee Schedule paid to that collaborator for services furnished to eligible beneficiaries during a CJR episode. While acknowledging the program integrity safeguards of the gainsharing cap, CMS is soliciting comments on the gainsharing cap and "any alternative gainsharing caps that may be appropriate to apply" in the CJR model.

Relating to the Quality Payment Program (QPP), the Proposed Rule expands the list of eligible clinicians who can potentially qualify for participation in the Advanced Alternative Payment Model (Advanced APM) track. In general, the CJR model is eligible to qualify as an Advanced APM in the QPP if participant hospitals attest to using Certified Electronic Health Record Technology. If that occurs, clinicians who participate in the CJR model at that hospital may be eligible for certain benefits for participation under the Advanced APM track of the QPP. Initially, Advanced APM eligibility was limited to only those clinicians who entered into financial arrangements with participant hospitals as part of their participation in CJR. Under the Proposed Rule, however, CMS proposes to broaden the scope of eligible clinicians to include those without a financial arrangement.

Baker Donelson's Comments:

- The Proposed Rule represents a reversal to a key policy of mandatory participation in certain bundled payment programs. In lieu of mandatory participation, CMS is seeking to increase stakeholder engagement through incentives available for voluntary participation. Assuming the Proposed Rule is finalized in its current form, hospitals and clinicians who anticipated participating in EPMs must reevaluate their options, particularly for those eligible clinicians who were expecting that their participation in an EPM would help qualify them for the Advanced APM track of the QPP.
- Hospitals who are no longer required to participate in CJR under the Proposed Rule should evaluate whether they wish to remain in the program because CMS is providing a limited period of time for those hospitals to "opt-in" for continued participation in CJR.
- Although the EPMs appear to have stalled for now, CMS has signaled that new voluntary bundled payment initiatives are forthcoming and clinicians and hospitals should look for new opportunities from CMS in the near future.

If you have any questions about the Proposed Rule, please contact any member of the Baker Ober Health Law Group.