Health Law Daily Wrap Up, ACUTE INPATIENT HOSPITALS—FINAL RULES: Flexibility in emergency events finalized for Comprehensive Joint Replacement participating hospitals, (Jun. 8, 2018)

Health Law Daily Wrap Up

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Flexibility in determining episode spending under the Comprehensive Care for Joint Replacement Payment Model (CJR) is provided under a new Final rule. In December 2017, CMS established the new CJR model effective January 1, 2018, and canceled two previous bundled payment models applying to hip fractures and cardiac events. That Final rule was issued in conjunction with an Interim final rule providing for an extreme and uncontrollable circumstances policy for CJR performance years two through five—giving flexibility in determining episode spending to CJR participating hospitals located in affected areas (see CMS cancels two bundled payment models, makes CJR model voluntary for some hospitals, December 1, 2017). That Interim final rule is now finalized (Final rule, 83 FR 26604, June 8, 2018.).

Extreme and uncontrollable circumstances policy. The policy addressed CJR participating hospitals in areas affected by Hurricane Harvey, Hurricane Irma, Hurricane Nate, and the California wildfires of August, September and October 2017. (There are no CJR participating hospitals in Puerto Rico and the U.S. Virgin Islands, which were affected by Hurricane Maria.) At least 102 CJR participant hospitals are located in those areas. Under the CJR Model, participating hospitals that have episode costs that exceed the target price for the performance year will owe CMS 5 percent of the loss, and is meant to incentivize providers to manage costs while improving the quality of CJR patient care. But in times of disaster, CMS acknowledges that costs may rise. Before the implementation of the Interim final rule, CJR regulations did not allow for an adjustment to episode spending that may have increased due to emergencies.

Affected hospitals. The extreme and uncontrollable events policy under the CJR differs from CMS' §1135 waiver authority allowing CMS to temporarily waive or modify certain Medicare requirements, initiated following Hurricane Katrina in 2005 and Superstorm Sandy in 2012. The waiver authority does not allow for payment adjustment for participant hospitals under the CJR model. The determination of which CJR participating hospitals are subject to the policy is narrower than §1135 waivers. The waivers are often granted for an entire geographic area, often an entire state. But under the CJR policy, only areas with adverse effects, with major disaster declarations under the Stafford Act, are included.

The Final rule lists the counties, parishes, and tribes that met the criteria for the CJR policy on extreme and uncontrollable circumstances in performance year two in the states of Alabama, California, Florida, Georgia, South Carolina, Texas, Louisiana.

Span of policy. This policy was created so that participating hospitals do not inadvertently place cost considerations above patient safety. To that end, the Final rule also differentiates between non-fracture and fracture CJR episodes. Because non-fracture major joint replacement surgeries are generally elective and nonemergent, those treatments can be held off until conditions stabilize and the infrastructure is reasonably restored. Therefore, for non-fracture episodes, the extreme and uncontrollable circumstances policy only applies to dates of admission that occur between 30 days before and up to the date on which the emergency period begins. CJR fracture cases, however, are often emergent and unplanned, and it "may not be prudent to postpone major joint surgical procedures." The policy applies to dates of admission that are on or within 30 days before or after the date on which the emergency periods begins.