



This document is scheduled to be published in the Federal Register on 03/04/2016 and available online at <http://federalregister.gov/a/2016-04786>, and on FDsys.gov

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 510

[CMS-5516-F2]

RIN-0938-AS64

Medicare Program; Comprehensive Care for Joint Replacement Payment Model for Acute Care Hospitals Furnishing Lower Extremity Joint Replacement Services; Corrections and Correcting Amendments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction and correcting amendments.

SUMMARY: In the November 24, 2015 **Federal Register** (80 FR 73274), we published a final rule to implement a new Medicare Part A and B payment model under section 1115A of the Social Security Act, called the Comprehensive Care for Joint Replacement (CJR) model, in which acute care hospitals in certain selected geographic areas will receive retrospective bundled payments for episodes of care for lower extremity joint replacement (LEJR) or reattachment of a lower extremity. The effective date was January 15, 2016. This correcting amendment corrects a limited number of technical and typographical errors identified in the November 24, 2015 final rule.

DATES: This correcting amendment is effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2015–29438 of November 24, 2015 (80 FR 73274), the final rule entitled "Comprehensive Care for Joint Replacement Payment Model for Acute Care Hospitals Furnishing Lower Extremity Joint Replacement Services" there were a number of technical and typographical errors that are identified and corrected in this correcting amendment. The provisions in this correcting amendment are effective as if they had been included in the final rule appearing in the November 24, 2015 **Federal Register**.

II. Summary of Errors

A. Summary of Errors in the Preamble

On pages 73274 and 73282, we made an error in identifying the acronym "MS-DRG".

On pages 73289, 73335, 73412, 73526, and 73528, we made inadvertent typographical errors which included the omission and addition of words, symbols, and lines of text.

On pages 73324, 73381, and 73535, we made typographical errors in the Medicare Severity Diagnosis Related Group (MS-DRG) and National Quality Forum (NQF) numbers.

On page 73324, we made typographical and grammatical errors when specifying several regulatory citations.

On pages 73338, 73355, 73357, and 73358, in our discussion of the "Episode Price Setting Methodology", we implied that the calculation of prospective target prices will incorporate the effective discount percentage determined by quality performance under the model. We clarify that target prices will be determined prospectively using a 3

percent discount percentage, and hospitals may experience a different effective discount percentage at reconciliation due to quality.

On page 73362, in our discussion of the "Methodology To Determine Performance on the Quality Measures", we made an error in the data submission requirements for the percentage of the eligible elective primary THA/TKA patients needed.

B. Summary of Errors in the Regulations Text

On page 73543, in the regulations text for §510.300, we erroneously included a paragraph regarding adjustments for quality performance (paragraph (a)(4)). We note that as specified in the final rule, target prices will be determined prospectively using a 3 percent discount percentage, and hospitals may experience a different effective discount percentage at reconciliation due to quality. To correct this error, we have removed paragraph (a)(4) and renumbered the subsequent paragraph (that is, the current paragraph (a)(5)).

On page 73544, in the regulation text at § 510.300(c)(2) (Determination of episode target prices) we inadvertently omitted the discount factor for repayment amounts in program years (PYs) 4 and 5. To correct this error, we have added a paragraph (c)(2)(iii).

On page 73549, in the regulation text at § 510.305, we made a cross-referencing error.

The corrections to the errors summarized in this section appear in the regulations text of this correcting amendment.

III. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes a statement of support.

We believe that this document does not constitute a rulemaking that would be subject to these requirements. This document corrects technical and typographic errors in the preamble and regulation text included in the Medicare Program; Comprehensive Care for Joint Replacement Payment Model for Acute Care Hospitals Furnishing Lower

Extremity Joint Replacement Services (80 FR 73274). The corrections contained in this document are consistent with, and do not make substantive changes to, the policies that were adopted subject to notice and comment procedures in the final rule. As a result, the corrections made through this document are intended to ensure that the Medicare Program; Comprehensive Care for Joint Replacement Payment Model for Acute Care Hospitals Furnishing Lower Extremity Joint Replacement Services final rule accurately reflects the policies adopted in that rule. In addition, even if this were a rulemaking to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for the CJR model final rule to accurately reflect our policies as of the date they take effect and are applicable. Furthermore, such procedures would be unnecessary, as we are not altering our policies; rather, we are simply implementing correctly the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the Medicare Program; Comprehensive Care for Joint Replacement Payment Model for Acute Care Hospitals Furnishing Lower Extremity Joint Replacement Services final rule accurately reflects these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors in the Preamble

In FR Doc. 2015–29438 of November 24, 2015 (80 FR 73274), make the following corrections:

1. On page 73274, third column, line 18, the phrase "MS–DRG Medical Severity Diagnosis-" is corrected to read "MS–DRG Medicare Severity Diagnosis-".
2. On page 73282, third column, last paragraph, lines 6 and 7, the phrase "Medical Severity Diagnosis-Related Group (MS–DRG)" is corrected to read "Medicare Severity Diagnosis-Related Group (MS–DRG)".
3. On page 73289, third column, sixth full paragraph, line 2, the phrase "that that" is corrected to read "that".
4. On page 73324—
 - a. Second column, first full paragraph, lines 26 and 27, the phrase "MS-DRG 569" is corrected to read "MS-DRG 469".
 - b. Third column—
 - (1) First partial paragraph, line 2, the phrase "§ 510.210(a)" is corrected to read "§ 510.210(a)".
 - (2) First full paragraph, line 3, the phrase “§ 510.2 and” is corrected to read “§ 510.210.”
 - (3) After the first full paragraph, the reference "**§ 510.210(a).**" is corrected by removing the reference.
5. On page 73335, first column, first paragraph, lines 4 and 5, the phrase "this final," is corrected to read "this final rule,".
6. On page 73338--
 - a. First column, last partial paragraph, lines 23 and 24, the phrase “will have 8 potential target prices" is corrected to read “will have potential target prices at reconciliation".

b. Second column, first partial paragraph,

(1) Lines 3 through 5, the phrase " and between January 1 and September 30 vs. between October 1 and December 31 for performance years 2 through 5)" is corrected to read "and between January 1 and September 30 vs. between October 1 and December 31 for performance years 2 through 5), as well as different potential effective discount factors at reconciliation, which reflects quality performance, as discussed in section III.C.5."

(2) Lines 6 through 16, the phrase "Each participant hospital in performance years 2 and 3 will have 16 target prices for the same combinations in performance years 1, 4, and 5, but with one group of 8 potential target prices for purposes of calculating reconciliation payments and another group of 8 potential target prices for purposes of determining hospital's responsibility for excess episode spending." is corrected to read "Each participant hospital in performance years 2 and 3 will have target prices for the same combinations as in performance years 1, 4, and 5, but with the potential for additional effective discount factors at reconciliation that reflect the reduced discount percentage for purposes of determining a hospital's responsibility for excess episode spending."

7. On page 73355--

a. First column, third full paragraph, lines 6 and 7, the phrase "used to calculate its target prices." is corrected to read "experienced at reconciliation ".

b. Third column, first full paragraph, lines 32 and 33, the phrase "discount factor for participant hospitals with" is corrected to read "effective discount factor at reconciliation for participant hospitals with".

8. On page 73357, third column, last bulleted paragraph, lines 4 through 7 and page 73358, first column, first partial paragraph, lines 1 through 4, the phrase " the appropriate effective discount factor that incorporates any quality incentive payment, as briefly described in section III.C.4.b.(9) of this final rule and more specifically detailed in the response to comments in section III.C.5. of this final rule and Tables 19, 20, and 21." is corrected to read " a 3-percent discount factor, as described in section III.C.4.b.(9). of this final rule."

9. On page 73381, second column, first full paragraph, line 38, the reference "(NQF #0116)" is corrected to read "(NQF #0166)".

10. On page 73412, third column, first full paragraph, line 29, the phrase "only be only" is corrected to read "only be".

11. On page 73526, third column, first full paragraph, lines 27 and 28, the phrase "as well as- on other methods" is corrected to read "as well as other methods".

12. On page 73528, first column, second paragraph, line 1, the acronym "CJR" is corrected by removing the acronym.

13. On page 73535, first column, fourth paragraph, line 14, the reference "(NQF #0116)" is corrected to read "(NQF #0166)".

List of Subjects for 42 CFR Part 510

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 510:

PART 510—COMPREHENSIVE CARE FOR JOINT REPLACEMENT MODEL

1. The authority citation for part 510 continues to read as follows:

Authority: Secs. 1102, 1115A, and 1871 of the Social Security Act (42 U.S.C. 1302, 1315(a), and 1395hh).

2. Section 510.300 is amended by--

- a. Removing paragraph (a)(4).
- b. Redesignating paragraph (a)(5) as new paragraph (a)(4).
- c. Adding paragraph (c)(2)(iii).

The addition reads as follows:

§ 510.300 Determination of episode target prices.

* * * * *

(c) * * *

(2) * * *

(iii) In performance years 4 and 5, 3.0 percent.

* * * * *

§ 510.305 [Amended]

3. In § 510.305, paragraph (f)(1)(iii) is amended by removing the cross-reference "§ 510.410(b)(5)" and adding in its place the cross-reference "§ 510.410(b)".

CMS-5516-F2

Dated: February 24, 2016.

Wilma Robinson,

Deputy Executive Secretary to the

Department,

Department of Health and Human

Services.

BILLING CODE 4120-01-P

[FR Doc. 2016-04786 Filed: 3/3/2016 8:45 am; Publication Date: 3/4/2016]