

Issue Brief

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CMS Releases Final Policy for Extreme and Uncontrollable Circumstances Policy for the Comprehensive Care for Joint Replacement Payment Model

The Centers for Medicare & Medicaid Services issued a final rule regarding extreme and uncontrollable circumstances for the Comprehensive Care for Joint Replacement Payment model. The short rule (26 pages) will be published in the *Federal Register* on Friday, June 8.

CMS notes that in its interim final rule with comment period published on Dec. 1, 2017, the agency established an extreme and uncontrollable circumstances policy for CJR performance years two through five to provide some flexibility in determining episode spending for CJR participant hospitals located in areas impacted by extreme and uncontrollable circumstances.

While this policy most notably addressed Hurricane Harvey, Hurricane Irma, Hurricane Nate and the California wildfires of August, September and October 2017, CMS notes that this policy also could include other similar events that occur within a given performance year, including performance year two, if those events meet the requirements CMS is setting forth in this policy.

Also occurring during this timeframe, Hurricane Maria has, and continues to have, a significant and crippling effect on Puerto Rico and the U.S. Virgin Islands, but was not part of the interim final rule with comment period, as the CJR model is not in operation in the areas impacted by Hurricane Maria. Therefore, there are no CJR participant hospitals that have been impacted by Hurricane Maria.

IDENTIFYING PARTICIPANT HOSPITALS AFFECTED BY EXTREME AND UNCONTROLLABLE CIRCUMSTANCES

The states and territories for which section 1135 waivers were issued in response to Hurricanes Harvey, Irma, Nate and the California wildfires (during the fall of 2017) are Alabama, California, Florida, Georgia, South Carolina, Texas, Louisiana and Mississippi. Section 1135 waivers also were issued for Puerto Rico and the Virgin Islands as a result of Hurricane Maria, but, as noted above, there are no CJR participant hospitals with CCNs with a primary address in either of these areas.

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continued

The counties, parishes and tribal governments that met the criteria for the CJR policy on extreme and uncontrollable circumstances in performance year two are as follows.

- The following Alabama counties: Autauga, Baldwin, Choctaw, Clarke, Dallas, Macon, Mobile and Washington.
- The following counties in California: Butte, Lake, Mendocino, Napa, Nevada, Orange, Sonoma, and Yuba.
- All 67 counties and Big Cypress Indian Reservation, Brighton Indian Reservation, Fort Pierce Indian Reservation, Hollywood Indian Reservation, Immokalee Indian Reservation and Tampa Reservation in Florida
- All 159 counties in Georgia
- All 46 counties and the Catawba Indian Reservation in South Carolina
- The following Texas counties: Aransas, Austin, Bastrop, Bee, Bexar, Brazoria, Calhoun, Chambers, Colorado, Dallas, Dewitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Hardin, Harris, Jackson, Jasper, Jefferson, Karnes, Kleberg, Lavaca, Lee, Liberty, Matagorda, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Tarrant, Travis, Tyler, Victoria, Walker, Waller and Wharton.
- The following Louisiana parishes: Acadia, Allen, Assumption, Beauregard, Calcasieu, Cameron, De Soto, Iberia, Jefferson Davis, Lafayette, Lafourche, Natchitoches, Plaquemines, Rapides, Red River, Sabine, St. Charles, St. Mary, Vermilion and Vernon.

The Secretary issued Mississippi a waiver under section 1135 for Hurricane Nate. However, the president did not issue a major disaster declaration (an emergency disaster declaration was issued.), so under this policy, Mississippi is not included on this list.

PROVISIONS OF THE FINAL REGULATIONS

This final rule incorporates the provisions of the interim final rule with comment period without changes. Therefore, this extreme and uncontrollable circumstances policy, as codified at 42 CFR 510.305(k) will apply to CJR participant hospitals that are both located in an emergency area during an emergency period (as those terms are defined in section 1135(g) of the Act) for which the Secretary has issued a waiver under section 1135; **and** that also are located in a county, parish or tribal government designated in a major disaster declaration under the Stafford Act.

*Analysis provided for MHA
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