

Bundled Payments for Care Improvement Advanced Amended and Restated Participation Agreement 2020-2 Amendment

This amendment is made to the Bundled Payments for Care Improvement Advanced Amended and Restated Participation Agreement (“Agreement”) between the Centers for Medicare & Medicaid Services (“CMS”) and _____ (“Participant”), _____ (BPID) (each a “Party” and collectively the “Parties”).

On or before January 1, 2020, the Parties executed the Agreement governing their rights and obligations under the Bundled Payments for Care Improvement (BPCI) Advanced Model (“Model”). The Parties wish to amend the Agreement with regard to quality measure accountability for Model Year 3 (January 1, 2020 through December 31, 2020), to make technical corrections to the Telehealth Payment Policy Waiver, and to incorporate certain flexibilities into the Agreement in response to a public health emergency (“PHE”).

The Parties wish to incorporate new flexibilities into the Agreement to enable the Participant and its Downstream Episode Initiators (if applicable) to continue participation in the Model while responding to the serious public health threats posed by the spread of respiratory disease caused by a novel coronavirus, referred to as “coronavirus disease 2019” (“COVID-19”). The Secretary of Health and Human Services declared a PHE on January 31, 2020, retroactively effective from January 27, 2020, to aid the nation’s healthcare community in responding to COVID-19. As the COVID-19 outbreak continues to strain health care resources, CMS understands that additional and unanticipated utilization of resources may be associated with the care of COVID-19 diagnosed beneficiaries and could affect the Participant’s financial success under the Model. To ensure that caring for COVID-19 diagnosed beneficiaries does not unnecessarily impede continued participation in the Model, the Parties wish to amend the Agreement to remove from Reconciliation, Clinical Episodes that initiate and end during calendar year 2020 where the BPCI Advanced Beneficiary was diagnosed with COVID-19 at any time during the Clinical Episode.

In light of the PHE, the Parties wish to amend the Agreement to remove from Reconciliation those Clinical Episodes that initiate during calendar year 2020 where the BPCI Advanced Beneficiary was diagnosed with COVID-19 at any point during the Clinical Episode. Although the severity of illness among beneficiaries with COVID-19 varies greatly, in many cases, the disease presentation is quite severe, resulting in significant utilization of health care resources. This utilization was not contemplated in the design of the Model’s financial methodology for Reconciliation, as set forth in the Agreement, and holding the Participant accountable for the full extent of these costs could result in negative financial consequences to the Participant and its Downstream Episode Initiators (if applicable) for their efforts in responding to the PHE. Accordingly, the Parties are amending the Agreement to provide that the Participant will not be held accountable for Clinical Episodes that initiate during calendar year 2020 where the BPCI Advanced Beneficiary was diagnosed with COVID-19 at any time during the Clinical Episode and that such Clinical Episodes will be removed from Reconciliation.

The Parties therefore agree to amend the Agreement as follows:

1. Effective Date. This amendment shall be effective on the date it is signed by the last Party to sign it (as indicated by the date associated with that Party’s signature).

2. Effect of Amendment. All other terms and conditions of the Agreement shall remain in full force and effect. In the event of any inconsistency between the provisions of this amendment and the provisions of the Agreement or any earlier amendment, the provisions of this amendment shall prevail.

3. Article 2 of the Agreement is hereby amended as follows:

a. The following definition is inserted in alphabetical order:

“COVID-19 Clinical Episode” means a Clinical Episode that initiates on or after January 1, 2020, and ends on or before June 30, 2021, where the items and services are furnished to a BPCI Advanced Beneficiary who receives a COVID-19 diagnosis, as defined by the codes identified in the Clinical Episode Construction Specifications, at any time during the Clinical Episode.

b. The definition of “Internal Cost Savings” is amended by revising the last sentence of the definition to read as follows: *“Internal Cost Savings do not include savings realized by a Convener Participant or any individual or entity that is not an NPRA Sharing Partner or savings realized on COVID-19 Clinical Episodes.”*

c. The definition of “Participant Profile” is amended by replacing the phrase “a list indicating the Clinical Episodes for which the Participant commits to be held accountable under BPCI Advanced” with *“a list indicating the Clinical Episodes for which the Participant commits to be held accountable in accordance with Article 5.5(a)(2)(i)”*

4. Article 5 of the Agreement is hereby amended as follows:

a. The last sentence of Article 5.1 is amended to read as follows: *“Pursuant to Article 5.5(a)(2) below, the Participant will be held accountable only for those Clinical Episodes identified on the Participant’s CMS-accepted Participant Profile, except for COVID-19 Clinical Episodes.”*

b. Article 5.2(a)(1) is amended to read in its entirety as follows:

*For purposes of Reconciliation, except for COVID-19 Clinical Episodes, a Clinical Episode initiated by an Anchor Stay will be included in the Reconciliation calculations for the Performance Period that is ongoing at the end of the 90-Day period that begins on the date of discharge from the Anchor Stay (“**Post-Anchor Period**”). COVID-19 Clinical Episodes will be excluded from Reconciliation.*

c. Article 5.2(a)(4) is amended to read in its entirety as follows:

In the event this Agreement is early terminated by either Party pursuant to Article 21, if the date of discharge from the Anchor Stay occurs prior to the effective date of termination, the Participant will be held accountable for the Clinical Episode for purposes of Reconciliation and the Post-Episode Monitoring Spending Calculation, regardless of whether the Clinical Episode ends after the final Performance Period, unless it is a COVID-19 Clinical Episode. If the date of discharge from the Anchor Stay occurs on or after the effective date of termination, or the Clinical Episode is a

COVID-19 Clinical Episode, the Participant will not be held accountable for the Clinical Episode for purposes of Reconciliation or the Post-Episode Monitoring Spending Calculation.

- d. Article 5.2(b)(1) is amended to read in its entirety as follows:

For purposes of Reconciliation, except for COVID-19 Clinical Episodes, a Clinical Episode initiated by an Anchor Procedure will be included in the Reconciliation calculations for the Performance Period that is ongoing at the end of the 90-Day period after completion of the Anchor Procedure. COVID-19 Clinical Episodes will be excluded from Reconciliation.

- e. Article 5.2(b)(3) is amended to read in its entirety as follows:

In the event this Agreement is terminated by either Party pursuant to Article 21, if the date of completion for the Anchor Procedure occurs prior to the effective date of termination, the Participant will be held accountable for the Clinical Episode for purposes of Reconciliation and the Post-Episode Monitoring Spending Calculation, regardless of whether the Clinical Episode ends after the final Performance Period, unless the Clinical Episode is a COVID-19 Clinical Episode. If the date of completion for the Anchor Procedure occurs on or after the effective date of termination, or the Clinical Episode is a COVID-19 Clinical Episode, the Participant will not be held accountable for the Clinical Episode for purposes of Reconciliation or the Post-Episode Monitoring Spending Calculation.

- f. Article 5.5(a)(2)(i) is amended to read in its entirety as follows:

The Participant shall be held accountable for all Clinical Episodes identified in its Participant Profile, except for COVID-19 Clinical Episodes. The Participant commits to identifying at least one Clinical Episode from the Clinical Episode List.

- g. Article 5.5(a)(3) is amended to read in its entirety as follows:

Downstream Episode Initiators. If the Participant is a Convener Participant, then the Participant shall include at least one Downstream Episode Initiator in its Participant Profile and indicate whether each of its Downstream Episode Initiators has entered into an SRS Reduction Agreement with CMS. Except for COVID-19 Clinical Episodes, the Participant is accountable for all Clinical Episodes identified on its Participant Profile that are attributed to Downstream Episode Initiators identified on the Participant Profile unless or until CMS allows changes to the Participant Profile in accordance with the terms of this Agreement, regardless of whether any agreement between the Participant and the Downstream Episode Initiator is earlier terminated or not.

5. Article 6.4 of the Agreement is hereby amended to add the following sentence as a new unlettered paragraph after paragraph (b): “*The Participant shall not identify on the Affiliated Practitioner List tab of the QPP List any individual who does not meet these requirements.*”

6. Articles 7.1(a) and 7.1(b) of the Agreement are hereby amended in their entirety to read as follows:
 - (a) *The Participant will be in a two-sided Risk Arrangement and bear 100 percent financial risk to CMS for up to the 99th percent of national Medicare FFS spending on each item or service included in each Clinical Episode for which the Participant has committed to be held accountable in its Participant Profile, except for COVID-19 Clinical Episodes. The AFP for each Clinical Episode is Winsorized at the 1st and 99th percentiles of the standardized AFP at the MS-DRG/APC-fiscal year level, during both the baseline year and the Performance Period in accordance with Appendix A of this Agreement.*
 - (b) *CMS will continue to pay the standard Medicare FFS payment for items and services furnished to the BPCI Advanced Beneficiary during a Clinical Episode, subject to an initial Reconciliation and at least two subsequent Reconciliation true-ups, as well as the performance of a Post-Episode Spending Calculation, each performed in accordance with this Article 7 and Appendix A of this Agreement. COVID-19 Clinical Episodes will be excluded from Reconciliation and the Post-Episode Spending Calculation.*
7. Article 7.3(a) of the Agreement is hereby amended as follows:
 - a. The following sentence is added at the end of Article 7.3(a)(1): *“COVID-19 Clinical Episodes will be excluded from Reconciliation.”*
 - b. Article 7.3(a)(7) is amended to read in its entirety as follows:
 - (7) *CMS will conduct an initial Reconciliation and at least two true-up Reconciliations for the final Performance Period of the Agreement Performance Period, which will include all Clinical Episodes that end prior to the effective date of the expiration of the Agreement Performance Period, except COVID-19 Clinical Episodes, in accordance with this Article 7 and Appendix A of this Agreement.*
8. Appendix A of the Agreement (“BPCI Advanced Payment Policies”) is hereby amended as follows:
 - a. The second paragraph of Section I(A) is amended to read in its entirety as follows:

The Participant’s Reconciliation calculations for a Performance Period will include all Clinical Episodes for which: (1) the Episode Initiator that submitted a claim for the Anchor Stay or Anchor Procedure is either the Participant or, if the Participant is a Convener Participant, a Downstream Episode Initiator participating in BPCI Advanced pursuant to an agreement with the Convener Participant; (2) to the extent that the Episode Initiator that submitted the claim for the Anchor Stay or Anchor Procedure is a PGP, the attending or operating physician’s NPI must appear on the institutional claim (UB-04) and a corresponding carrier claim (Part B claim) with the participating PGP’s TIN that is billed during the Anchor Stay or Anchor Procedure; (3) the Clinical Episode was initiated within the period of time that defines the applicable Performance Period (see Article 5.2 of the Agreement for additional information regarding the Performance

Period in which a given Clinical Episode is deemed to be included), except for COVID-19 Clinical Episodes, which will be excluded from Reconciliation; (4) the AFP for that Clinical Episode was not subject to Reconciliation for a prior Performance Period; (5) the Clinical Episode was not initiated prior to the Start Date or after the end of the Agreement Performance Period (except for those Clinical Episodes described in Article 5.2(a)(4) and Article 5.2(b)(4)); and (6) the Clinical Episode has not been attributed to another Participant pursuant to the precedence rules described below.

- b. The first sentence of the second paragraph of Section IV(A) is amended to read as follows: “*CMS will sum the Negative Reconciliation Amounts and Positive Reconciliation Amounts for all Clinical Episodes attributed to an Episode Initiator for the applicable Performance Period, except for COVID-19 Clinical Episodes, which will be excluded from Reconciliation.*”
9. The first sentence of the third paragraph of Appendix D of the Agreement (“Quality Measures List and Reporting Requirements”) is hereby amended to read as follows: “*The Participant will be accountable for the quality measures in the Required Quality Measures Set, except with respect to COVID-19 Clinical Episodes.*”
10. Appendix G of the Agreement (“Telehealth Payment Policy Waiver”) is hereby amended as follows:
 - a. Section I is amended to replace the phrase “during a BPCI Advanced Clinical Episode by an Eligible Telehealth Provider” with “*during a BPCI Advanced Clinical Episode for which the Participant has committed to be held accountable in the Participant Profile, and is furnished by an Eligible Telehealth Provider*”.
 - b. The following text is inserted after Section I and before Section III: “***II. [Reserved]***”.
 - c. Section IV(a) and Section IV(b) are revised to replace references to “Section II of this Appendix G” with “*Section I of this Appendix G*”.

[SIGNATURE PAGE FOLLOWS]

The signatory for the Participant certifies that he or she is authorized to execute this amendment and to legally bind the Participant. Each party is signing this amendment on the date stated below that party's signature. If a party signs but fails to date a signature, then the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this amendment.

PARTICIPANT

By: _____
Name: _____
Title: _____
Date: _____

**CENTERS FOR MEDICARE
& MEDICAID SERVICES**

By: _____
Name: _____
Title: Deputy Director, Center for Medicare and
Medicaid Innovation (CMMI)
Date: _____