

510.500 Sharing arrangements under the CJR model.

(a) General. (1) A participant hospital may enter into a sharing arrangement with a CJR collaborator to make a gainsharing payment, or to receive an alignment payment, or both. A participant hospital must not make a gainsharing payment or receive an alignment payment except in accordance with a sharing arrangement.

(2) A sharing arrangement must comply with the provisions of this section and all other applicable laws and regulations, including the applicable fraud and abuse laws and all applicable payment and coverage requirements.

(3) Participant hospitals must develop, maintain, and use a set of written policies for selecting individuals and entities to be CJR collaborators. These policies must contain criteria related to, and inclusive of, the quality of care delivered by the potential CJR collaborator. The selection criteria cannot be based directly or indirectly on the volume or value of past or anticipated referrals or business otherwise generated by, between or among the participant hospital, any CJR collaborator, any collaboration agent, any downstream collaboration agent, or any individual or entity affiliated with a participant hospital, CJR collaborator, collaboration agent, or downstream collaboration agent. A selection criterion that considers whether a potential CJR collaborator has performed a reasonable minimum number of services that would qualify as CJR activities will be deemed not to violate the volume or value standard if the purpose of the criterion is to ensure the quality of care furnished to CJR beneficiaries.

(4) If a participant hospital enters into a sharing arrangement, its compliance program must include oversight of sharing arrangements and compliance with the applicable requirements of the CJR model.

(b) Requirements. (1) A sharing arrangement must be in writing and signed by the parties, and entered into before care is furnished to CJR beneficiaries under the sharing arrangement.

(2) Participation in a sharing arrangement must be voluntary and without penalty for nonparticipation.

(3) The sharing arrangement must require the CJR collaborator and its employees, contractors (including collaboration agents), and subcontractors (including downstream collaboration agents) to comply with all of the following:

(i) The applicable provisions of this part (including requirements regarding beneficiary notifications, access to records, record retention, and participation in any evaluation, monitoring, compliance, and enforcement activities performed by CMS or its designees).

(ii) All applicable Medicare provider enrollment requirements at § 424.500 of this chapter, including having a valid and active TIN or NPI, during the term of the sharing arrangement.

(iii) All other applicable laws and regulations.

(4) The sharing arrangement must require the CJR collaborator to have or be covered by a compliance program that includes oversight of the sharing arrangement and compliance with the requirements of the CJR model that apply to its role as a CJR collaborator, including any distribution arrangements.

(5) The sharing arrangement must not pose a risk to beneficiary access, beneficiary freedom of choice, or quality of care.

(6) The board or other governing body of the participant hospital must have responsibility for overseeing the participant hospital's participation in the CJR model, its arrangements with CJR collaborators, its payment of gainsharing payments, its receipt of alignment payments, and its use of beneficiary incentives in the CJR model.

(7) The written agreement memorializing a sharing arrangement must specify the following:

(i) The purpose and scope of the sharing arrangement.

(ii) The obligations of the parties, including specified CJR activities and other services to be performed by the parties under the sharing arrangement.

(iii) The date of the sharing arrangement.

(iv) The financial or economic terms for payment, including the following:

(A) Eligibility criteria for a gainsharing payment.

(B) Eligibility criteria for an alignment payment.

(C) Frequency of gainsharing or alignment payment.

(D) Methodology and accounting formula for determining the amount of a gainsharing payment or alignment payment.

(8) The sharing arrangement must not -

(i) Induce the participant hospital, CJR collaborator, or any employees, contractors, or subcontractors of the participant hospital or CJR collaborator to reduce or limit medically necessary services to any Medicare beneficiary; or

(ii) Restrict the ability of a CJR collaborator to make decisions in the best interests of its patients, including the selection of devices, supplies, and treatments.

(c) Gainsharing payment, alignment payment, and internal cost savings conditions and restrictions. (1) Gainsharing payments, if any, must -

(i) Be derived solely from reconciliation payments, or internal cost savings, or both;

(ii) Be distributed on an annual basis (not more than once per calendar year);

(iii) Not be a loan, advance payment, or payment for referrals or other business; and

(iv) Be clearly identified as a gainsharing payment at the time it is paid.

(2)(i) To be eligible to receive a gainsharing payment, a CJR collaborator must meet quality of care criteria for the performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment. The quality of care criteria must be established by the participant hospital and directly related to the CJR episode.

(ii) To be eligible to receive a gainsharing payment, or to be required to make an alignment payment, a CJR collaborator other than ACO, PGP, NPPGP, or TGP must have directly furnished a billable item or service to a CJR beneficiary during a CJR episode that occurred in the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment or was assessed a repayment amount.

(iii) To be eligible to receive a gainsharing payment, or to be required to make an alignment payment, a CJR collaborator that is a PGP, NPPGP, or TGP must meet the following criteria:

(A) The PGP, NPPGP, or TGP must have billed for an item or service that was rendered by one or more PGP member, NPPGP member, or TGP member respectively to a CJR beneficiary during a CJR episode that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment or was assessed a repayment amount.

(B) The PGP, NPPGP, or TGP must have contributed to CJR activities and been clinically involved in the care of CJR beneficiaries during the same performance year for which the CJR participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment or was assessed a repayment amount. For example, a PGP, NPPGP, or TGP might have been clinically involved in the care of CJR beneficiaries by -

(1) Providing care coordination services to beneficiaries during and/or after inpatient admission;

(2) Engaging with a participant hospital in care redesign strategies, and actually performing a role in implementing such strategies, that are designed to improve the quality of care for CJR episodes and reduce CJR episode spending; or

(3) In coordination with other providers and suppliers (such as PGP members, NPPGP members, or TGP members; the participant hospital; and post-acute care providers), implementing strategies designed to address and manage the comorbidities of CJR beneficiaries.

(iv) To be eligible to receive a gainsharing payment, or to be required to make an alignment payment, a CJR collaborator that is an ACO must meet the following criteria:

(A) The ACO must have had an ACO provider/supplier that directly furnished, or an ACO participant that billed for, an item or service that was rendered to a CJR beneficiary during a CJR episode that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment or was assessed a repayment amount; and

(B) The ACO must have contributed to CJR activities and been clinically involved in the care of CJR beneficiaries during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment or was assessed the repayment amount. For example, an ACO might be have been clinically involved in the care of CJR beneficiaries by -

(1) Providing care coordination services to CJR beneficiaries during and/or after inpatient admission;

(2) Engaging with a participant hospital in care redesign strategies, and actually performing a role in implementing such strategies, that are designed to improve the quality of care and reduce spending for CJR episodes; or

(3) In coordination with providers and suppliers (such as ACO participants, ACO providers/suppliers, the participant hospital, and post-acute care providers), implementing strategies designed to address and manage the comorbidities of CJR beneficiaries.

(3)(i) The methodology for accruing, calculating and verifying internal cost savings must be transparent, measurable, and verifiable in accordance with generally accepted accounting principles (GAAP) and Government Auditing Standards (The Yellow Book).

(ii) The methodology used to calculate internal cost savings must reflect the actual, internal cost savings achieved by the participant hospital through the documented implementation of CJR activities identified by the participant hospital and must exclude -

(A) Any savings realized by any individual or entity that is not the participant hospital; and

(B) "Paper" savings from accounting conventions or past investment in fixed costs.

(4) The total amount of a gainsharing payment for a performance year paid to a CJR collaborator must not exceed the following:

(i) In the case of a CJR collaborator who is a physician or nonphysician practitioner, 50 percent of the Medicare-approved amounts under the PFS for items and services furnished by that physician or nonphysician practitioner to the participant hospital's CJR beneficiaries during CJR episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being made.

(ii) In the case of a CJR collaborator that is a PGP or NPPGP, 50 percent of the Medicare-approved amounts under the PFS for items and services billed by that PGP or NPPGP and furnished to the participant hospital's CJR beneficiaries by the PGP members or NPPGP members respectively during CJR episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being made.

(5) The amount of any gainsharing payments must be determined in accordance with a methodology that is substantially based on quality of care and the provision of CJR activities. The methodology may take into account the amount of such CJR activities provided by a CJR collaborator relative to other CJR collaborators.

(6) For a performance year, the aggregate amount of all gainsharing payments that are derived from a reconciliation payment the CJR participant hospital receives from CMS must not exceed the amount of that reconciliation payment.

(7) No entity or individual, whether a party to a sharing arrangement or not, may condition the opportunity to make or receive gainsharing payments or to make or receive alignment payments directly or indirectly on the volume or value of past or anticipated referrals or business otherwise generated by, between or among the participant hospital, any CJR collaborator, any collaboration agent, any downstream collaboration agent, or any individual or entity affiliated with a participant hospital, CJR collaborator, collaboration agent, or downstream collaboration agent.

(8) A participant hospital must not make a gainsharing payment to a CJR collaborator if CMS has notified the participant hospital that such collaborator is subject to any action for noncompliance with this part or the fraud and abuse laws, or for the provision of substandard care to CJR beneficiaries or other integrity problems.

(9) The sharing arrangement must require the participant hospital to recoup any gainsharing payment that contained funds derived from a CMS overpayment on a reconciliation report or was based on the submission of false or fraudulent data.

(10) Alignment payments from a CJR collaborator to a participant hospital may be made at any interval that is agreed upon by both parties, and must not be -

(i) Issued, distributed, or paid prior to the calculation by CMS of a repayment amount reflected in a reconciliation report;

(ii) Loans, advance payments, or payments for referrals or other business; or

(iii) Assessed by a participant hospital if it does not owe a repayment amount.

(11) The participant hospital must not receive any amounts under a sharing arrangement from a CJR collaborator that are not alignment payments.

(12) For a performance year, the aggregate amount of all alignment payments received by the participant hospital must not exceed 50 percent of the participant hospital's repayment amount.

(13) The aggregate amount of all alignment payments from a CJR collaborator to the participant hospital may not be greater than -

(i) With respect to a CJR collaborator other than an ACO, 25 percent of the participant hospital's repayment amount.

(ii) With respect to a CJR collaborator that is an ACO, 50 percent of the participant hospital's repayment amount.

(14) The amount of any alignment payments must be determined in accordance with a methodology that does not directly account for the volume or value of past or anticipated referrals or business otherwise generated by, between or among the participant hospital, any CJR collaborator, any collaboration agent, any downstream collaboration agent, or any individual or entity affiliated with a participant hospital, CJR collaborator, collaboration agent, or downstream collaboration agent.

(15) All gainsharing payments and any alignment payments must be administered by the participant hospital in accordance with generally accepted accounting principles (GAAP) and Government Auditing Standards (The Yellow Book).

(16) All gainsharing payments and alignment payments must be made by check, electronic funds transfer, or another traceable cash transaction.

(d) Documentation requirements. (1) Participant hospitals must - (i) Document the sharing arrangement contemporaneously with the establishment of the arrangement;

(ii) Publicly post (and update on at least a quarterly basis) on a Web page on the CJR participant hospital's Web site -

(A) Accurate current and historical lists of all CJR collaborators, including CJR collaborator names and addresses.

(B) Written policies for selecting individuals and entities to be CJR collaborators required by § 510.500(a)(3).

(iii) Maintain and require each CJR collaborator to maintain contemporaneous documentation with respect to the payment or receipt of any gainsharing payment or alignment payment that includes at a minimum:

(A) Nature of the payment (gainsharing payment or alignment payment);

(B) Identity of the parties making and receiving the payment;

(C) Date of the payment;

(D) Amount of the payment;

(E) Date and amount of any recoupment of all or a portion of a CJR collaborator's gainsharing payment.

(F) Explanation for each recoupment, such as whether the CJR collaborator received a gainsharing payment that contained funds derived from a CMS overpayment on a reconciliation report, or was based on the submission of false or fraudulent data.

(2) The participant hospital must keep records of all of the following:

(i) Its process for determining and verifying its potential and current CJR collaborators' eligibility to participate in Medicare.

(ii) Its plan to track internal cost savings.

(iii) Information on the accounting systems used to track internal cost savings.

(iv) A description of current health information technology, including systems to track reconciliation payments and internal cost savings.

(v) Its plan to track gainsharing payments and alignment payments.

(3) The participant hospital must retain and provide access to, and must require each CJR collaborator to retain and provide access to, the required documentation in accordance with § 510.110.