

Proposed Settlement to Broaden Medicare Coverage for Chronic Conditions

Dear Readers!

Today an article appeared in the New York Times outlining the proposed settlement of a lawsuit that challenged the government's practice of denying some coverage to patients whose condition was not improving. This settlement will certainly have an effect on current procedures in terms of Medicare coverage for patients affected by lymphedema.

Under the terms of the settlement, which is expected to be approved by judge Christina Reiss, the chief judge of the Federal District Court in Vermont in coming months, Medicare would not deny skilled nursing care and various forms of therapy for beneficiaries, regardless of their prognosis.

Medicare is required by law to cover healthcare services that are "reasonable and necessary for the diagnosis or treatment of illness or injury." In practice however, Medicare has at times denied coverage for skilled care for beneficiaries whose condition was not considered likely to improve under what came to be known as the "improvement standard." Under this standard, individuals on Medicare suffering from disabilities or chronic conditions that were not expected to improve, might have been denied coverage for physical therapy that could help keep them stable or prevent a further decline in their health.

The proposed settlement would allow Medicare beneficiaries with disabilities or chronic conditions to qualify for Medicare benefits for physical, speech and occupational therapy, and skilled nursing services that the program would not pay for previously.

If the proposed settlement is accepted by the court, the Centers for Medicare and Medicaid Services (CMS) will re-write portions of its Medicare Benefit Policy Manual and include rules to "maintain the patient's current condition or prevent or slow further deterioration" for skilled nursing and home health services.

Here some excerpts on revisions from the settlement document:

Manual Revisions

1. The agency will revise the relevant portions of Chapters 7, 8, and 15 of the Medicare Benefit Policy Manual (MBPM) to clarify the coverage standards for the skilled nursing facility (SNF), home health (HH), and outpatient therapy (OPT) benefits when a patient has no restoration or improvement potential but when that patient needs skilled SNF, HH, or OPT services (SNF, HH, OPT "maintenance coverage standard").

The agency will also revise the relevant portions of Chapter 1, Section 110 of the MBPM to clarify the coverage standards for services performed in an inpatient rehabilitation facility (IRF).

2. The manual revisions to be made pursuant to this Settlement Agreement will clarify the SNF, HH, and OPT maintenance coverage standards and IRF coverage standard only as set forth below in Sections IX.6 through IX.8.

Existing Medicare eligibility requirements for coverage remain in effect.

Nothing in this Settlement Agreement modifies, contracts, or expands the existing eligibility requirements for receiving Medicare coverage, including such requirements found in: a. Post hospital SNF Care, as set forth in 42 C.F.R. Part 409, Subparts C and D, and related sub regulatory guidance;

b. Home Health Services, as set forth in 42 C.F.R. Part 409, Subpart E, 42 C.F.R. Part 410, Subpart C, and related sub regulatory guidance;

c. Outpatient Therapy Services, as set forth in 42 C.F.R. Part 410, Subpart B, and related sub regulatory guidance; and

d. Inpatient Rehabilitation Facility services, as set forth in 42 C.F.R. Part 412, Subpart P, and related sub regulatory guidance.

3. CMS will revise or eliminate any manual provisions in Chapters 7, 8, and 15 and Chapter 1, Section 110 of the MBPM that CMS determines are in conflict with the standards set forth below in Sections IX.6 through IX.8.

Maintenance Coverage Standard for Therapy Services under the SNF, HH, and OPT Benefits

6. Manual revisions will clarify that SNF, HH, and OPT coverage of therapy to perform a maintenance program does not turn on the presence or absence of a beneficiary's potential for improvement from the therapy, but rather on the beneficiary's need for skilled care.

a. The manual revisions will clarify that, under the SNF, HH, and OPT maintenance coverage standards, skilled therapy services are covered when an individualized assessment of the patient's clinical condition demonstrates that the specialized judgment, knowledge, and skills of a qualified therapist ("skilled care") are necessary for the performance of a safe and effective maintenance program. Such a maintenance program to maintain the patient's current condition or to prevent or slow further deterioration is covered so long as the beneficiary requires skilled care for the safe and effective performance of the program. When, however, the individualized assessment does not demonstrate such a necessity for skilled care, including when the performance of a maintenance program does not require the skills of a therapist because it could safely and effectively be accomplished by the patient or with the assistance of non-therapists, including unskilled caregivers, such maintenance services will not be covered under the SNF, HH, or OPT benefits.

b. The manual revisions will further clarify that, under the standard set forth in the previous paragraph (Section IX.6.a.), skilled care is necessary for the performance of a safe and effective maintenance program only when (a) the particular patient's special medical complications require the skills of a qualified therapist to perform a therapy service that would otherwise be considered non-skilled; or (b)

the needed therapy procedures are of such complexity that the skills of a qualified therapist are required to perform the procedure.

c. The manual revisions will further clarify that, to the extent provided by regulation, the establishment or design of a maintenance program by a qualified therapist, the instruction of the beneficiary or appropriate caregiver by a qualified therapist regarding a maintenance program, and the necessary periodic reevaluations by a qualified therapist of the beneficiary and maintenance program are covered to the degree that the specialized knowledge and judgment of a qualified therapist are required.

d. The maintenance coverage standard for therapy as outlined in this section does not apply to therapy services provided in an inpatient rehabilitation facility (IRF) or a comprehensive outpatient rehabilitation facility (CORF).

Here the link to the complete settlement agreement: <http://www.medicareadvocacy.org/wp-content/uploads/2012/10/Proposed-Settlement-Agreement.101612.pdf>

New York Times article: http://www.nytimes.com/2012/10/23/us/politics/settlement-eases-rules-for-some-medicare-patients.html?ref=us&_r=1