JIMMO OVERVIEW AND FAQS

CENTER FOR MEDICARE ADVOCACY

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June 23, 2015

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“Glenda Jimmo, of Lincoln, VT, was one of the plaintiffs in the class-action lawsuit challenging the cutoff of Medicare payments for physical therapy and other treatments for patients who were not improving.” NY Times, 2/2013

WHY LITIGATION?

- Medicare covers services (Nursing, Therapy) in certain settings only if the care is considered skilled.
  - Skilled Nursing Facility (SNF)
  - Home Health
  - Outpatient Physical Therapy
  - Inpatient Rehabilitation Facility (IRF)
WHY LITIGATION?

- Service is “so inherently complex that it can be safely and effectively performed only by, or under the supervision of, professional or technical personnel.” 42 C.F.R. § 409.32(a)
- A condition that does not ordinarily require skilled services, may require skill because of special medical conditions. 42 C.F.R. § 409.32(b)
- Must be documented.

- Restoration potential is not the deciding factor in determining whether skilled care is required. Even if full recovery or medical improvement is not possible, a patient may need skilled services to prevent further deterioration or preserve current capabilities. 42 C.F.R. § 409.32(c)
JIMMO v. SEBELIUS, NO. 5:11-CV-17
(D. VT., Settlement Approved Jan. 24, 2013)

- Federal class action to eliminate improvement standard in skilled nursing facilities (SNFs), home health (HH), outpatient therapy (OPT).
- Filed Jan. 18, 2011 by CMA and Vermont Legal Aid
- Plaintiffs: 5 individuals and 6 organizations
  1. National MS Society
  2. Alzheimer’s Association
  3. National Committee to Preserve Social Security & Medicare
  4. Paralyzed Veterans of America
  5. Parkinson’s Action Network
  6. United Cerebral Palsy

WHAT JIMMO MEANS

- CMS revised Medicare policy manuals, guidelines, instructions to “clarify”:
  - Coverage does not turn on the presence or absence of potential for improvement but rather on the need for skilled care.
  - Services can be skilled and covered when:
    - Needed to maintain, prevent, or slow decline or deterioration; or
    - Skilled professional is needed to ensure services are safe and effective.
WHAT JIMMO MEANS

- Jimmo/ CMS revised Medicare policies apply to:
  - SNF, HH, and Outpatient Therapy – PT, ST/SLP or OT, collectively = Outpatient Therapy (OPT)
  - Skilled maintenance therapies and nursing are covered by Medicare
  - Inpatient Rehabilitation Hospital (Facility) (IRF)
  - Claim should never be denied because patient:
    - Cannot achieve complete independence in self-care
    - Cannot be expected to return to prior level of functioning

WHAT JIMMO MEANS

- CMS conducted Educational Campaign about policy revisions
  - Completed February 2014
- Explained Settlement and new policies to:
  - Medicare Contractors, Medicare adjudicators, providers
NURSING TO MAINTAIN FUNCTION OR SLOW DETERIORATION

- Maintenance nursing is a Medicare-covered service if nurse needed to provide or supervise care
  - E.g., observation & assessment by a skilled nurse when there is a “reasonable probability” for a complication or acute episode, even if it does not occur. Medicare Benefits Policy Manual, Ch. 8, §30.2.3.2 ex. 6
- Decision regarding coverage should turn on whether skill is needed, not whether individual is expected to improve.

THERAPY TO MAINTAIN FUNCTION OR SLOW DETERIORATION

“Maintenance Therapy – Therapy services in connection with a maintenance program are considered skilled when they are so inherently complex that they can be safely and effectively performed only by, or under the supervision of, a qualified therapist. … 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.”

Medicare Benefit Policy Manual, Chapter 8, §30.4.1.2.E
INDIVIDUALIZED ASSESSMENT

- Medicare should not use “rules of thumb,” such as
  - Lack of restoration potential
  - “Determination of whether skilled nursing care is reasonable and necessary must be based solely upon the beneficiary’s unique condition and individual needs, without regard to whether the illness or injury is acute, chronic, terminal, or expected to last a long time.”

Home Health Regs. 42 CFR §409.44(b)(3)(iii)

MEDICARE PROHIBITS THE USE OF RULES OF THUMB

Certain phrases may indicate Rules of Thumb have been used to deny coverage.

Examples:
- Individual has “plateaued.”
- Individual has “reached baseline.”
- Individual is “chronic and stable.”
- Individual needs “maintenance therapy only.”
FAQs RE JIMMO SETTLEMENT

- Is Jimmo limited to certain diagnoses, diseases, conditions?
  - No! Jimmo applies to anyone who needs skilled care.
- What types of services are covered?
  - Skilled nursing and skilled therapies.
- Does Jimmo add to number of covered SNF days or change other underlying coverage rules?
  - No. Coverage rules and limits remain (Examples: HH/Homebound OPT/Annual payment caps)
- Does Jimmo apply to Medicare Advantage plans?
  - Yes! Medicare Advantage plans must cover the same benefits as original Medicare. MA plans must apply the clarified standard under Jimmo.

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JIMMO SUMMARY

Questions to Ask:
- Is a skilled professional needed to ensure nursing or therapy is safe and effective? Yes - Medicare covers.
- Put another way: Is a qualified nurse or therapist needed to provide or supervise the care? Yes - Medicare covers.

Regardless of whether the skilled care is needed to improve, or maintain, or slow deterioration of the condition. Or if condition is “chronic” or “stable” or has “plateaued.”

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**JIMMO & DOCUMENTATION**

- Government added “enhanced” documentation guidance, mixed in with Manual revisions
- Theme is that the need for and receipt of skilled care must be evident – show that the care was skilled
- No magic words – but vague phrases like “patient tolerated treatment well,” “continue with POC,” and “patient remains stable” are NOT sufficient to establish coverage.

**SUMMARY**

- Coverage turns on whether skilled care is required (This is key to Jimmo)
- Restoration potential is **not** the deciding factor
- Medicare should **not** be denied because the beneficiary has a chronic condition or needs services to maintain his/her condition
- An “Individualized Assessment” of each claim is required
- Rules of thumb should **not** be used
JIMMO UPDATE: WHAT’S NEXT?

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Questions?
Jimmo Implementation Council

#JimmoCouncil

Supported by the John A. Hartford Foundation

June 23, 2015

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