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National Provider Call

Jimmo v. Sebelius Settlement Agreement

December 16, 2013

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Agenda

- Overview
- Settlement Agreement
- Improvement Standard
- Settlement Agreement Activities
  - Revised Program Manuals
  - Educational Campaign
  - Claims Review
- Concluding Remarks
- Questions and Answers

Overview

- On January 24, 2013, the U. S. District Court for the District of Vermont approved a settlement agreement in the case of *Jimmo v. Sebelius,* involving skilled care for the skilled nursing facility (SNF), home health (HH), inpatient rehabilitation facility (IRF), and outpatient therapy (OPT) benefits.
- The settlement agreement sets forth a series of specific steps for the Centers for Medicare & Medicaid Services (CMS) to undertake, including issuing clarifications to existing program guidance and new educational material on this subject.
- The goal of this settlement agreement is to ensure that claims are correctly adjudicated in accordance with existing Medicare policy, so that Medicare beneficiaries receive the full coverage to which they are entitled.

The Settlement Agreement

- The settlement agreement is intended to clarify that when skilled nursing or skilled therapy services are required in order to provide care that is reasonable and necessary to prevent or slow further deterioration, coverage cannot be denied based on the absence of potential for improvement or restoration. Conversely, coverage in this context would not be available when the beneficiary's care needs can be met safely and effectively through the use of nonskilled personnel.
- The *Jimmo v. Sebelius* settlement agreement includes language specifying that **"Nothing in this Settlement Agreement modifies, contracts, or expands the existing eligibility requirements for receiving Medicare coverage."**
- Accordingly, any actions undertaken in connection with this settlement do not represent an ***expansion or contraction*** of coverage, but rather, serve to clarify ***existing*** policy so that Medicare claims will be adjudicated consistently and appropriately.

Improvement Standard: Inappropriate Where Treatment Goal is Maintenance

- No “Improvement Standard” is to be applied in determining Medicare coverage for maintenance claims that require skilled care.
- Skilled nursing or therapy services are covered where such services are necessary to maintain the patient’s current condition or prevent or slow further deterioration safely and effectively.

Improvement Standard: Appropriate Where Treatment Goal is Restorative

- Restorative Services – These are services whose purpose is to reverse, in whole or in part, a previous loss of function. In evaluating a claim for skilled services that are restorative in nature (or "Rehabilitative Therapy" in the OPT setting), it would be appropriate to consider the beneficiary's potential for improvement from the services.
- This standard applies whether restorative skilled nursing or skilled therapy is provided in the SNF or HH settings. It would also be the case in the IRF setting and for Rehabilitative Therapy in the OPT setting, where the goal of treatment is restoring function.

Improvement Standard versus Need for Skilled Care

- Maintenance Services – These are skilled nursing or therapy services necessary to maintain the patient's condition or to prevent or slow further deterioration. There may be specific instances in the SNF, HH, and OPT settings where, even though no improvement is expected, the skills of a qualified therapist, registered nurse, or (when provided by regulation) a licensed practical nurse are required to perform a type of service that would otherwise be unskilled because of the patient's special medical complications, as well as when the needed services are of such complexity that only such a practitioner can perform it safely and effectively.
- In evaluating a claim for skilled maintenance nursing or therapy, coverage does not turn on the presence or absence of an individual's potential for improvement, but rather, on the beneficiary's need for skilled care, along with the underlying reasonableness and necessity of the services themselves. Any Medicare coverage or appeals decisions concerning skilled care coverage must reflect this basic principle.

Activities – *Revised Program Manuals: SNF, HH, OPT*

- On **December 6**, CMS published revisions to the following relevant portions of the Medicare Benefit Policy Manual (MBPM):
  - **Chapter 7 – Home Health (HH)**
  - **Chapter 8 – Skilled Nursing Facility (SNF)**
  - **Chapter 15 – Outpatient Therapy (OPT)**

- Revisions clarify that, in the maintenance context, coverage of skilled nursing and skilled therapy services "…does not turn on the presence or absence of a beneficiary's potential for improvement, but rather on the beneficiary's need for skilled care."

Activities – *Revised Program Manuals: IRF*

- On **December 6**, CMS also published revisions to the following relevant portion of the Medicare Benefit Policy Manual (MBPM):
  - **Chapter 1, Section 110 – Inpatient Rehabilitation Facility (IRF**)

- The MPBM revisions clarify the coverage standards for services performed in the IRF setting, which indicate that coverage should never be denied because a patient cannot be expected to achieve complete independence in the domain of self-care, or because a patient cannot be expected to return to his or her prior level of functioning.

- The maintenance coverage standards do not apply to services furnished in an IRF or a comprehensive outpatient rehabilitation facility (CORF).

Activities – *Revised Program Manuals: Documentation*

- Enhanced Guidance on Appropriate Documentation – Portions of the revised manual provisions now include additional material on the role of appropriate documentation (both generally and as it relates to particular clinical scenarios) in facilitating accurate coverage determinations for claims involving skilled care.

- While the presence of appropriate documentation is not explicitly addressed in the terms of the *Jimmo* settlement and is not, in and of itself, an element of the definition of a "skilled" service, such documentation serves as the means by which a provider would be able to establish and a Medicare contractor would be able to confirm that skilled care is required; that it is, in fact, provided; and, that all other coverage requirements are met (e.g., the services themselves are reasonable and necessary).

Activities – *Revised Program Manuals: Clarifications*

Coverage for Nursing Maintenance Services: Need for Skilled Personnel

- **Skilled nursing** services to maintain the patient's current condition or prevent or slow further deterioration are covered under the SNF and HH benefits as long as an individualized assessment of the patient's clinical condition demonstrates that the specialized judgment, knowledge, and skills of a registered nurse or, when provided by regulation, a licensed practical (vocational) nurse ("skilled care") are necessary in order for the maintenance services to be safely and effectively provided.

- However, when the individualized assessment does not demonstrate such a need for skilled care (including when the services needed do not require skilled nursing care because they could safely and effectively be performed by the patient or unskilled caregivers), such services are not covered under the SNF or HH benefits.

Activities – *Revised Program Manuals: Clarifications*

Coverage for Nursing Maintenance Services: <u>Complexity</u> of the patient or service

- **<u>Skilled nursing</u>** care is necessary in this context only when (a) the particular patient's special medical complications require the skills of a registered nurse or, when provided by regulation, a licensed practical nurse to perform a type of service that would otherwise be considered non-skilled; or (b) the needed services are of such complexity that the skills of a registered nurse or, when provided by regulation, a licensed practical nurse are required to furnish the services.

Activities – *Revised Program Manuals: Clarifications*

Coverage for Therapy Maintenance Services: Need for Skilled Personnel

- **Skilled therapy** services to maintain the patient's current condition or prevent or slow further deterioration are covered under the SNF, HH, and OPT benefits as long as 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 to design or establish a safe and effective maintenance program or under certain circumstances, for the actual performance of such a program.

- However, when the individualized assessment does not demonstrate such a need 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 are not covered under the SNF, HH, or OPT benefits.

Activities – *Revised Program Manuals: Clarifications*

Coverage for Therapy Maintenance Services: Complexity of the patient or service

- **Skilled therapy** 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.

Activities – *Revised Program Manuals: Examples*

Maintenance coverage for nursing services under the HH benefit

Assuming all other requirements for HH coverage have been met, the following example demonstrates a scenario under which skilled nursing services for maintenance would be covered under the Home Health benefit

- Following a cerebrovascular accident (CVA), a patient has an in-dwelling Foley catheter because of urinary incontinence and is expected to require the catheter for a long and indefinite period. The medical condition of the patient must be described and documented to support the need *for nursing skilled services in the home health plan of care*. Periodic visits to change the catheter as needed, treat the symptoms of catheter malfunction, and teach proper catheter care would be covered as long as they are reasonable and necessary, although the patient is stable, *even if* there is an expectation that the care will be needed for a long and indefinite period. *However, at every home health visit, the patient's current medical condition must be described and there must be documentation to support the need for continued skilled nursing services.*

Activities – *Revised Program Manuals: Examples*

Maintenance coverage for therapy services under the SNF benefit

Assuming all other requirements for SNF coverage have been met, the following example demonstrates a scenario under which skilled therapy services for maintenance would be covered under the SNF benefit

- A patient with Parkinson's disease may require the services of a physical therapist to determine the type of exercises that are required to maintain his present level of function. The initial evaluation of the patient's needs, the designing of a maintenance program which is appropriate to the capacity and tolerance of the patient and the treatment objectives of the physician, the instruction of the patient or supportive personnel (e.g., aides or nursing personnel) in the carrying out of the program, would constitute skilled physical therapy and must be documented in the medical record.

Activities - *Educational Campaign*

- **Informing Stakeholders:**
  - CMS is conducting a nationwide educational campaign for contractors, adjudicators, and providers and suppliers.
  - CMS has disseminated the following written materials:
    - » **Program Transmittal;**
    - » **Medicare Learning Network (MLN) Matters article;**
    - » **Updated 1-800 MEDICARE scripts.**
  - In addition to this national conference call for Medicare contractors, Administrative Law Judges, medical reviewers, and agency staff, CMS will be holding a call on Dec. 19th for providers and suppliers.

Activities – *Claims Review*

- **Claims Review:**
  - To ensure beneficiaries receive the care to which they are entitled, CMS will engage in accountability measures, including review of a random sample of SNF, HH, and OPT coverage decisions to determine overall trends and identify any problems, as well as a review of individual claims determinations that may not have been made in accordance with the principles set forth in the settlement agreement.

Concluding Remarks

- The *Jimmo v. Sebelius* settlement agreement does not change existing Medicare coverage requirements; it only serves to clarify that, in the context of maintenance services, coverage **does not turn on the presence or absence of potential for improvement, but on the need for skilled care.**

- The goal of the *Jimmo v. Sebelius* settlement agreement is to ensure that claims are correctly adjudicated in accordance with existing Medicare policy, so that Medicare beneficiaries receive the full coverage to which they are entitled.

Question and Answer Session

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Thank You

- For more information about the MLN Connects National Provider Call Program, please visit http://cms.gov/Outreach-and-Education/Outreach/NPC/index.html

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