**8-24-17: NEWS & ANNOUNCEMENTS FROM MEDICARE**

Looking for information about the **Jimmo Settlement Agreement? (Maintenance services for patients)**

CMS Launches Jimmo Settlement Agreement Webpage:

**https://www.cms.gov/Center/Special-Topic/Jimmo-Center.html**

• Background on the settlement

• Links to resources

• Frequently Asked Questions (FAQs)

The Centers for Medicare & Medicaid Services (CMS) reminds the Medicare community of the Jimmo Settlement Agreement (January 2013), which clarified that the Medicare program covers skilled nursing care and **skilled therapy services** under Medicare’s skilled nursing facility, home health, and **outpatient therapy benefits when a beneficiary needs skilled care in order to maintain function or to prevent or slow decline or deterioration (provided all other coverage criteria are met).** Specifically, the Jimmo Settlement required manual revisions to restate a “maintenance coverage standard” for both skilled nursing and therapy services under these benefits:

• Skilled nursing services would be covered where such skilled nursing services are necessary to maintain the patient's current condition or prevent or slow further deterioration so long as the beneficiary requires skilled care for the services to be safely and effectively provided.

**• 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.**

The Jimmo Settlement **may reflect a change in practice for those providers, adjudicators, and contractors who may have erroneously believed that the Medicare program covers nursing and therapy services under these benefits only when a beneficiary is expected to improve.** The Settlement is consistent with the Medicare program’s regulations governing maintenance nursing and therapy in skilled nursing facilities, home health services, and outpatient therapy (physical, occupational, and speech) and nursing and therapy in inpatient rehabilitation hospitals for beneficiaries who need the level of care that such hospitals provide.

**Specifically, Skilled therapy is necessary for the performance of a safe and effective maintenance program only when the needed therapy procedures are of such complexity that the skills of a qualified therapist are needed to perform the procedure, or the patient’s special medical complications require the skills of a qualified therapist to perform a therapy service that would otherwise be considered non-skilled. 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 qualified therapist because it could be safely and effectively 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 therapy benefits. 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.**

**Where can you see examples of patients and documentation?**

The revised Medicare Benefit Policy Manual provisions [Chapters 7(SNF), 8(HH), & 15(OPT)] include information on the role of appropriate documentation in facilitating accurate coverage determinations for claims involving skilled care. While the presence of appropriate documentation is not, in and of itself, an element of coverage, 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, in fact, needed and received in a given case. In revising the manual provisions pursuant to the settlement agreement, CMS has provided additional guidance in this area, both generally and as it relates to particular clinical scenarios.

We note that the manual revisions do not require the presence of any particular phraseology or verbal formulation as a prerequisite for coverage (although some areas of the Medicare Benefit Policy Manual do identify certain vague phrases like “patient tolerated treatment well,” “continue with POC,” and “patient remains stable” as being insufficiently explanatory to establish coverage). Rather, coverage determinations must consider the entirety of the clinical evidence in the file, and our enhanced guidance on documentation is intended to assist providers in their efforts to identify and include the kind of clinical information that can most effectively serve to support a finding that skilled care is needed and received— which, in turn, will help to ensure more accurate and appropriate claims adjudication.

Care must be taken to assure that documentation justifies the necessity of the skilled services provided. Justification for treatment would include, for example, objective evidence or a clinically supportable statement of expectation that, in the case of maintenance therapy, the skills of a qualified therapist are necessary to maintain, prevent, or slow further deterioration of the patient’s functional status, and the services cannot be safely and effectively carried out by the beneficiary personally, or with the assistance of non-therapists, including unskilled caregivers.

Applies to patients with Medicare ACO and Advantage Plans