Long-Term Care Survey Alert

Regulations: Expect Revisions to Medicare Benefit Policy Manual

Necessity, not improvement, will be the criterion for therapy reimbursement.

The landmark court decision for Jimmo v. Sebelius spells good news for your SNF. Medicare reimbursement for your skilled nursing facility's (SNF's) therapy services is no longer at stake if your patient does not improve.

The scoop: The plaintiffs in Jimmo v. Sebelius (consisting of several health organizations, spearheaded by the **Center for Medicare Advocacy**) had charged that the so-called "improvement standard" violated Medicare law, stated **Marsha Greenfield**, vice president of legislative affairs for Washington, DC-based Leading Age, in a recent analysis. Although CMS entered into a settlement with the plaintiffs, the government did not admit any wrongdoing or that the standard even existed.

Anticipate These Medicare Manual Revisions

As part of the settlement agreement, the **Centers for Medicare & Medicaid Services** (CMS) has agreed to revise the Medicare Benefit Policy Manual, according to **Judy Wilhide Brandt**, of **Judy Wilhide Consulting, Inc.** Under the new manual clarifications, such coverage depends not on the resident's restoration potential, but on whether skilled care is required, along with the underlying necessity of the services, Brandt said in a Dec. 10 blog posting.

What this means: CMS is rewriting the Medicare Benefit Policy Manual "to clarify that there is no requirement for improvement, and that Medicare will cover SNF, home health and outpatient therapy needed to maintain the beneficiary's current condition or to prevent/slow deterioration," Greenfield explained. CMS has also included in the manual rules to this effect, which you can view at www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R176BP.pdf.

"As a result, Medicare beneficiaries with disabilities or chronic conditions such as multiple sclerosis, Parkinson's disease, stroke, and paralysis will qualify for Medicare benefits for physical, speech and occupational therapy, and skilled nursing services regardless of whether their condition is expected to improve," Greenfield wrote.

Understand Restorative/Rehabilitative Vs. Maintenance Therapy

Expect the official manual revisions to include a clear divide between "restorative/rehabilitative therapy" and "maintenance therapy." In a Dec. 13, 2013 MLN Matters document, CMS explains these two terms as follows:

- **Restorative/rehabilitative therapy** — "In evaluating a claim for skilled therapy that is restorative/rehabilitative (i.e., whose goal and/or purpose is to reverse, in whole or in part, a previous loss of function), it would be entirely appropriate to consider the beneficiary's potential for improvement from the services. We note that such a consideration must always be made in the IRF [Independent Rehabilitation Facility] setting, where skilled therapy must be reasonably expected to improve the patient's functional capacity or adaptation to impairments in order to be covered."
- **Maintenance therapy** — "Even if no improvement is expected, under the SNF, HH [home health], and OPT [outpatient therapy] coverage standards, skilled therapy services are covered when an individualized assessment of the patient's condition demonstrates that skilled care is necessary for the performance of a safe and effective maintenance program to maintain the patient's current condition or prevent or slow further deterioration. Skilled maintenance therapy may be covered when the particular patient's special medical complications or the complexity of the therapy procedures require skilled care."

Pay Attention to Documentation Guidance for Skilled Care

What's more: In addition to clarifying that the "no improvement" standard does not exist, parts of the revised manual now include additional material on the role of appropriate documentation in claims involving skilled care, Brandt said. Although the Jimmo settlement does not specifically reference documentation requirements, CMS has decided to use the manual revision as an opportunity to offer additional guidance in this area.

"Coverage determinations must consider the entirety of the clinical evidence in the file, and our enhanced guidance on documentation is intended simply 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," CMS stated.

Look ahead: Expect to see an aggressive educational campaign by CMS in the months to come, including written materials and interactive forums to educate providers and Medicare contractors about the manual changes, Greenfield noted.

CMS listed an effective date of Jan. 7, 2014 for the transmittal and MLN Matters document released on Dec. 13, 2013. You can access the document at www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/MM8458.pdf.