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Jimmo Case Re-Review Deadline Approaching

Stemming from the settlement agreement in *Jimmo v. Sebelius*, which involved allegedly improper claim denials for *skilled care* reimbursable by Medicare, the deadline for Medicare beneficiaries to have certain claims for *skilled care* re-reviewed by the *Centers for Medicare & Medicaid Services* (CMS) is approximately one month away. Until July 23, 2014, CMS will accept applications for re-review of *skilled nursing facility* (SNF); *home health* (HH); *outpatient therapy* (OPT); and, *inpatient rehabilitation facility* (IRT) service claims denied by CMS between January 18, 2011, and January 24, 2013, because of a Medicare beneficiary's "*failure to improve or to have the potential to improve*."[1] The re-review deadline limits the window in which beneficiaries and providers can recoup monies lost due to the allegedly improper use of the "*improvement*" rule of thumb by Medicare claims contractors to deny coverage for *skilled care* services when a beneficiary has little to no potential for improvement of health status.[2]

Medicare provides payment for SNF,[3] HH,[4] OPT,[5] and IRT[6] services for eligible Medicare beneficiaries in need of *skilled care* by nursing or physician professionals. Medicare reimburses these services, collectively known as "*skilled care*" services by CMS,[7] to providers when medical services are:

(1) Reasonable;
(2) Necessary;[8] and,
(3) Either of the following two requirements:
    (a) "*Require the skills of qualified technical or professional health personnel…*"; or,
    (b) "*Must be provided directly by or under the general supervision of these skilled nursing or skilled rehabilitation personnel to assure the safety of the patient and to achieve the medically desired result*."[9]

Reimbursement for these services hinges solely on *the level of skill* required of the healthcare professional in that instance of care,[10] and disregards other "*rules of thumb*," e.g., patient improvement, to determine whether reimbursement is proper.[11]

In the *Jimmo* case, the plaintiff beneficiaries alleged that many claims for *skilled care* services, consisting of SNF, HH, OPT, and IRT services, were improperly denied according to the "*improvement standard*," a rule of thumb allegedly used by Medicare contractors in making claim determinations that required beneficiaries to show improvement in health status for their providers to receive reimbursement from Medicare.[12] The settlement resolved these allegations through three broad actions:

(1) Adding clarification about *skilled care* reimbursement to various chapters within the Medicare Benefit Policy Manual;
(2) Educating Medicare contractors and adjudicators; *skilled care* providers; equipment suppliers; and, other interested parties of these manual updates; and,
(3) Allowing for retroactive re-review of qualifying claims denied from January 18, 2011, through January 23, 2014.[13]

The *Jimmo* settlement dismissed the allegations against CMS by the class of plaintiffs, but the settlement allows either party to file a motion of non-compliance with the district court if the opposite party fails to abide by the terms of the settlement.[14]

CMS implemented its manual revisions related to the *Jimmo* settlement in January 2014.[15] Primarily, CMS revised its manual to clarify that the *improvement standard* should *not* be used to determine reimbursement for services requiring *skilled care*. In its chapter on HH services, CMS instructed its contractors that:

> "*coverage of skilled nursing care or therapy…does not turn on the presence or absence of a patient's potential for improvement from the nursing care or therapy, but rather on the patient's need for skilled care*."[16]

Similarly, CMS's revised manual on SNF reimbursement states that "*skilled care may be necessary to improve a patient's current condition, to maintain the patient's current condition, or to prevent or slow further deterioration of the patient's condition*."[17] Each of these clarifying provisions is matched with detailed instructions on the level of documentation necessary to meet this definition. These changes, which affect SNF, HH, OPT, and IRT benefits, emphasize that skilled services "*turn on the need for skilled care – not on the ability of an individual to improve*."[18] The revisions further highlight CMS's

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desire to avoid unapproved *rules of thumb*, such as the *improvement standard*, in making Medicare claim determinations.

In accordance with the *Jimmo* settlement,[19] CMS instituted a deadline for *skilled care* claim re-review of July 23, 2014. This deadline applies to Medicare beneficiary claims that meet the following requirements:

(1) The Medicare beneficiary either:
    (a) Received "*skilled nursing or therapy services*" reimbursable as SNF services or HH services; *or*,
    (b) Received "*skilled therapy services*" as an outpatient;
(2) Medicare denied reimbursement solely because of the patient's non-improvement or "*no longer (having) the potential to improve*";
(3) Medicare denied the claim between January 18, 2011, through January 24, 2013; *and*,
(4) The claims were either:
    (a) Not reimbursed by Medicare or a third-party insurer; *or*,
    (b) Covered by Medicaid and the patients are "*personally or financially liable or subject to recovery*."[20]

CMS will review claims for possible reimbursement from qualifying Medicare beneficiaries that meet the aforesaid requirements. In each claim review, CMS requests that the submitting parties submit a "*Request for Review*" form provided by CMS, as well as provide documentation of "*additional evidence*" in support of their claim for reimbursement.[21]

From the present until July 23, 2014, CMS will re-review submissions on qualifying claims dated between January 18, 2011, and January 23, 2013. Forms to submit a re-review can be found on CMS's website, and all submissions must be sent to CMS by fax or mail based on the address listed on the form. [22] CMS will then send the claim to Q2 Administrators, a qualified independent contractor for CMS, to review the submissions.[23]

1 "Request for Re-Review of Medicare Claims Related to the Settlement Agreement in Jimmo v. Sebelius" Centers for Medicare & Medicaid Services, January 2014, https://www.q2a.com/Portals/0/JIMMO_REREVIEWFORM-508.pdf (Accessed 6/6/14).
2 "Jimmo v. Sebelius Settlement Agreement Fact Sheet" Centers for Medicare & Medicaid Services, http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Jimmo-FactSheet.pdf (Accessed 6/6/14).
3 "Healthcare Valuation" By Robert James Cimasi, Hoboken, New Jersey, John Wiley & Sons, Inc, 2014, pg. 128.
4 Ibid, pg. 130.
5 "Is my Test, Item, or Service Covered? Physical Therapy/Occupational Therapy/Speech-Language Pathology Services" Medicare.gov, http://www.medicare.gov/coverage/pt-and-ot-and-speech-language-pathology.html (Accessed 6/6/14).
6 "Payment System Fact Sheet Series: Inpatient Rehabilitation Facility Prospective Payment System" Centers for Medicare & Medicaid Services, https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/InpatRehabPaymtfctsht09-508.pdf (Accessed 6/6/14), p. 2.
7 CMS, 2014.
8 *Ibid*.
9 "30.2.1: Skilled Services Defined" Centers for Medicare and Medicaid Services, Ch. 8: Coverage of Extended Care (SNF) Services Under Hospital Insurance, Medicare Benefit Policy Manual, 4/4/14, https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c08.pdf (Accessed 6/6/14); see also "40.1.1: General Principles Governing Reasonable and Necessary Skilled Nursing Care" Centers for Medicare and Medicaid Services, Ch. 7: Home Health Services, Medicare Benefit Policy Manual, 1/14/14, http://www.cms.gov/Regulations-and Guidance/Guidance/Manuals/downloads/bp102c07.pdf (Accessed 6/6/14) (stating "services may be classified as a skilled nursing service on the basis of complexity alone…[H]owever, in some cases, the condition of the patient may cause a service…ordinarily considered unskilled to be considered a skilled nursing service").
10 CMS, 2014.
11 "20.3: Use of Utilization Screens and 'Rules of Thumb'" Centers for Medicare and Medicaid Services, Ch. 7: Home Health Services, Medicare Benefit Policy Manual, 1/14/14, http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c07.pdf (Accessed 6/6/14).
12 CMS, 2014.
13 *Ibid*.
14 [Proposed] Settlement Agreement, "Glenda Jimmo, et al. v. Kathleen Sebelius" No. 5:11-cv-17-CR (D.V.T. 2012).
15 "Ch. 8: Coverage of Extended Care (SNF) Services Under Hospital Insurance" Centers for Medicare & Medicaid Services, Medicare Benefit Policy Manual, 4/14/14, https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c08.pdf (Accessed 6/6/14); "Ch. 7: Home Health Services" Centers for Medicare & Medicaid Services, Medicare Benefit Policy Manual, 1/14/14, http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c07.pdf (Accessed 6/6/14).
16 "20.1.2: Determinations of Coverage" Centers for Medicare & Medicaid Services, Ch. 7: Home Health Services, Medicare Benefit Policy Manual, 1/14/14, http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c07.pdf (Accessed 6/6/14).
17 CMS, 4/4/14.
18 "Improvement Standard and Jimmo News" Center for Medicare Advocacy, http://www.medicareadvocacy.org/medicare-info/improvement-standard/ (Accessed 6/6/14).
19 CR, 2012.
20 "Request for Re-Review of Medicare Claims Related to the Settlement Agreement in Jimmo v. Sebelius" Centers for Medicare & Medicaid Services, January 2014, https://www.q2a.com/Portals/0/JIMMO_REREVIEWFORM-508.pdf (Accessed 6/6/14).
21 CMS, January 2014.
22 *Ibid*.
23 "February 2014 - Improvement Standard Update: Re-Review of Previously Denied Claims Pursuant to Jimmo and Other Issues" Center for Medicare Advocacy, http://www.medicareadvocacy.org/february-2014-improvement-standard-update-re-review-of-previously-denied-claims-pursuant-to-jimmo-and-other-issues/ (Accessed 6/11/14).

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