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MEDICARE UPDATE: An End to Medicare's "Improvement Standard"

Medicare will no longer apply the Improvement Standard in order to qualify for Medicare coverage. Patients may now receive coverage to retain or slow further deterioration of their illness. Improvement is no longer the required criteria.

On October 16, 2012, a proposed Settlement Agreement was reached in *Jimmo v. Sebelius*, a case involving the "Improvement Standard" under Medicare. Under the terms of the Settlement, skilled services are to be covered by Medicare when it is required to maintain an individual's condition or to prevent or slow his or her further deterioration. For many years the "Improvement Standard" has led to thousands of people being denied Medicare coverage based on the grounds that their condition was either stable, chronic, or not improving, or their necessary services were considered "maintenance only." The case of *Jimmo v. Sebelius* was a result of "a nationwide class of Medicare beneficiaries by six individual beneficiaries and seven national organizations representing people with chronic conditions," who challenged the illegality of the Improvement Standard, which has denied so many people Medicare coverage for so many years.

The following was reached in the Settlement Agreement for the case of *Jimmo v. Sebelius*:

1. Coverage under the new standard will be retroactive to January 18, 2011. Sources have claimed that individuals are still being denied Medicare coverage based on the Improvement Standard. However, the standards reached in the agreement apply now, and people are encouraged to appeal their denials. Once the agreement is finalized, a review will take place for those who were denied Medicare coverage for skilled maintenance services based on the Improvement Standard after January 18, 2011.
2. The Settlement Agreement is not limited to an individual's particular condition or disease. The agreement reached in the case of *Jimmo v. Sebelius* "applies to anyone who requires skilled services to maintain or slow deterioration regardless of their underlying illness, disability or injury."
3. The skilled maintenance services provided through the Settlement Agreement extend to Medicare home health, outpatient therapy, as well as skilled nursing facilities.
4. The services covered by Medicare through the Settlement Agreement include nursing or therapy services in which the skills of a qualified professional would be needed in a skilled nursing home, a home health setting, or an outpatient setting.

The agreement was filed in federal District Court and approved by a preliminary order by Chief Judge Christina Reiss on November 20, 2012, in the District of Vermont. The Settlement Agreement centers on the "Improvement Standard." Once the proposed agreement is approved,

the Medicare Benefit Policy Manual, as well as other Medicare Manuals, will be revised by the CMS. A new policy will be added to reinforce the fact that Medicaid can now cover skilled nursing and therapy services in order to maintain an individual's condition. Additionally, precise provisions will be added to the Medicare Manuals regarding nursing and therapy maintenance and the formal education of both adjudicators and providers.

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