Center for
Medicare Advocacy
MedicareAdvocacy.org

Summary: *Jimmo v. Sebelius*, No. 5:11-cv (D.VT, 1/24/2013; 12/2017)

I. Introduction

In 2011, the Center for Medicare Advocacy and Vermont Legal Aid brought a national class action lawsuit in federal court on behalf of Glenda Jimmo and five organizations that represent older people, people with disabilities, and people with longer term and chronic conditions. (Alzheimer Association, United Cerebral Palsy, the National Multiple Sclerosis Society, Paralyzed Veterans of America, and the National Committee to Preserve Social Security and Medicare.) The plaintiffs in the lawsuit challenged the Medicare agency's policies and practices that denied Medicare coverage for skilled care necessary to maintain an individual's condition or slow decline. Instead, Medicare required improvement for an individual to obtain Medicare coverage. The plaintiffs challenged this use of an "improvement standard."

The *Jimmo* case was settled in 2013, with an agreement, approved by the court, confirming that an improvement standard is not to be applied in determining Medicare coverage for nursing home care, home health care, and outpatient therapy. The Settlement confirmed that skilled care in all these settings is coverable to maintain an individual's condition or slow decline when a professional is necessary to provide or supervise the care in order to ensure it is safe and effective. Medicare coverage for care in an Inpatient Rehabilitation Facility was also clarified by the *Jimmo* Settlement.

Unfortunately, implementation of the *Jimmo* settlement, rulings, and revised policies has been inconsistent, at best. Too often the Medicare coverage rights affirmed by *Jimmo* are unknown or ignored by providers, Medicare contractors, and Medicare Advantage plans – leaving beneficiaries without access to Medicare and necessary care. The information included here is intended to help advance implementation of *Jimmo* and remove barriers to Medicare-covered care to maintain or slow an individual's decline.

II. To Comport with the Settlement and Court Orders in *Jimmo*, the Centers for Medicare & Medicaid Services (CMS) Revised Portions of its Medicare Benefit Policy Manuals (MBPMs) and Guidance

Example: CMS Transmittal 179, Manual Updates to Clarify Skilled Nursing Facility (SNF), Home Health (HH), and Outpatient [Therapy] (OPT) Coverage Pursuant to *Jimmo vs. Sebelius*. (1/14/2014**):**

> "in order to clarify that 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.' Skilled care may be necessary to improve a patient's condition, to maintain a patient's current condition, or to prevent or slow further deterioration of the patient's condition. …
> **No 'Improvement Standard' is to be applied in determining Medicare coverage for maintenance claims that require skilled care**…" [Emphasis in original CMS document.]

As discussed below, CMS also made many significant revisions to its Medicare Benefit Policy Manuals (MBPMs) for skilled nursing facility, home health, outpatient therapy, and inpatient rehabilitation facility care to conform with the *Jimmo* settlement and court rulings.

III. Frequently Asked Questions About *Jimmo*

A. General

1. **Question:** My health care provider says I can't get more Medicare-covered care because I have reached a plateau and I am not improving. How do I educate them about the *Jimmo* Settlement?

Answer: The *Jimmo* Settlement confirmed that Medicare coverage is available for skilled care to maintain or slow decline of an individual's condition, not just to improve. You can refer your therapist to the *Important Message About Jimmo* and other related information that reiterates this on the Medicare agency's website, at www.CMS.gov.

See the *Jimmo* Settlement, here, and information regarding *Jimmo* on the Center for Medicare Advocacy's website, www.MedicareAdvocacy.org, at https://medicareadvocacy.org/medicare-info/improvement-standard/.

If you find that you need to appeal a Medicare denial, you can get help from the Center for Medicare Advocacy by using its Self-Help resources at www.MedicareAdvocacy.org.

2. **Question:** My therapist says I can't get any more therapy because I have Parkinsons disease. Does the *Jimmo* Settlement only apply to people with certain diseases, diagnoses, or conditions?

Answer: No. The Settlement is not limited to any particular condition or disease. It applies to anyone who requires skilled nursing or therapy to maintain or slow deterioration regardless of the underlying illness, disability or injury. Parkinsons disease, Multiple Sclerosis, stroke, and paralysis are just some examples of conditions that may require the skills of a therapist and/or nurse to provide necessary care safely and effectively.

3. **Question:** Does the *Jimmo* Settlement apply to Medicare beneficiaries with cognitive impairments and how are individual determinations of Medicare coverage to be made?

Answer: Yes. The Jimmo Settlement applies to all Medicare beneficiaries, including application of the clarified standard for coverage of skilled care to maintain or slow decline of a condition. No "rules of thumb" should be used to determine eligibility for Medicare coverage. An individualized assessment of the beneficiary's condition, the need for skilled care, and the reasonableness and necessity of the treatment is required.

> **Example:** After a hospitalization, a beneficiary receives skilled physical and occupational therapy in a skilled nursing facility (SNF) for 14 days. While she is currently no longer improving, she still requires daily skilled therapy to maintain and prevent deterioration, and otherwise meets all coverage requirements. It is appropriate for her to continue to receive Medicare coverage for care in the SNF. Just as for any other person in Medicare, there is no arbitrary cut-off for coverage. An individualized assessment is necessary, and coverage may continue as long as the patient has a continuing need for skilled therapy or nursing. Note: The maximum of 100 days of SNF coverage per benefit period still applies, and that the medical record should document the skilled nature of the therapy that the patient requires to maintain her condition.

See, http://www.medicareadvocacy.org/wp-content/uploads/2013/04/HPMS-memo_Jimmo-04-08-13-final.pdf

4. **Question:** Does the *Jimmo* Settlement apply to beneficiaries in Medicare Advantage plans?

Answer: Yes. Under the law, Medicare Advantage (MA) plans *must* cover the same Part A and Part B benefits as traditional Medicare, and must also apply the clarified standard for coverage of skilled care under *Jimmo*. Just as with any other Medicare beneficiary, no "rules of thumb" should be used to determine coverage. An individualized assessment of the beneficiary's medical condition and the reasonableness and necessity of the treatment is required.

> **Example:** After an acute episode a beneficiary in a Medicare Advantage plan is receiving skilled nursing home visits and home health aides covered by her plan. She has congestive heart failure, diabetes, leg and foot ulcers, and, after three weeks, is deemed to be "chronic." The training and judgment of a skilled nurse are still necessary to monitor, manage, and assess her multiple serious conditions, *which have the reasonable potential to change and result in an adverse event*. It is appropriate for her care plan to continue coverage. The fact that she is "chronic" or in a Medicare Advantage plan is not determinative. Note: All other coverage criteria, such as being "homebound," for home health coverage, must also continue to be met, and the documentation should reflect the reasons why the skilled nursing visits continue to be reasonable and necessary.

http://www.medicareadvocacy.org/wp-content/uploads/2013/04/HPMS-memo_Jimmo-04-08-13-final.pdf

B. Skilled Nursing Facility

1. **Question:** My father was in a SNF following a 3-day inpatient hospital stay for a fractured hip. In the SNF, he received physical and occupational therapies for a week. After a week the SNF terminated the therapies because of his cognitive issues and Parkinson's disease – stating that he was not going to improve and his condition was chronic. The physician continued the orders for daily physical therapy to maintain his condition and prevent and slow decline. Does the Jimmo Settlement apply to therapy services under a Part A stay in a SNF?

Answer: Yes, a patient who needs the skills of a therapist to maintain his condition should continue to receive daily skilled therapy even if the patient has cognitive problems or a chronic condition like Parkinson's disease.

A case which raised these issues went before an Administrative Law Judge (ALJ) following an appeal by the family. The ALJ found that the physical therapy was covered by Medicare:

> "…The physician stated that the patient was in need of maintenance physical therapy to attempt to regain limited assisted ambulatory status. …Treatment modalities included therapeutic exercises for range of motion and strength training, gait training for ambulation, and transfer training. By August of 2014, the plan of care and maintenance therapy plan had to be adjusted to account for the Beneficiary's unique medical complications. These services required the skills

of a professional therapist. … The physical therapy SNF services provider to the Beneficiary… were reasonable and necessary… .”

C. Home Health Care

1. **Question:** How does the maintenance coverage standard under the *Jimmo* Settlement apply to Medicare home health coverage for skilled observation and assessment of homebound Medicare beneficiaries?

Answer: Observation and assessment of the patient’s condition is identified as a skilled nursing service under Medicare criteria. This care is coverable when 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 performed. Depending on the unique condition of the patient, these services may continue to be reasonable and necessary for a patient for so long as there is a reasonable potential for complications, and all other coverage requirements are met. Coverage does not depend on the patient’s restoration potential, and changes to the treatment plan or the patient’s condition are not required. A patient may appear to be chronic or stable, but because of a reasonable potential for complications the patient may continue to require skilled care to maintain their condition, or to prevent or slow their deterioration.

The determination of coverage for maintenance nursing should be made based on the individualized assessment of their overall medical condition, and the reasonableness and necessity of the treatment, care, or services in question.

See, *Jimmo* Settlement at pp. 12-13; Medicare Benefits Policy Manual (MBPM), Ch. 7 § 40.1:
“…skilled nursing services are 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); MBPM Ch. 7 § 40.1.2.1 (“skilled observation services are still covered… so long as there remains a reasonable potential for such complications or further acute episode”.

2. **Question:** Is Medicare home health coverage available even if a patient has a condition that requires nursing care over the course of many months?

Answer: Yes. Medicare may continue to be available if the clinical documentation supports an ongoing need for medically reasonable and necessary intermittent skilled nursing care.

> **Example:** A homebound, non-ambulatory beneficiary has non-healing leg ulcers. On occasion, the beneficiary has been hospitalized due to infection stemming from the site. Although the beneficiary’s family performs some wound care, the treating physician has ordered a home health nurse to observe and assess the wounds and the patient once or twice each month, to timely identify clinical issues that warrant either a change or addition to the ordered treatment, education, or other appropriate intervention.

See, MBPM, Ch. 7 § 40.1:
“Although the beneficiary has chronic, non-healing ulcers, “coverage of skilled nursing care does not turn on the presence or absence of a patient’s potential for improvement from the

nursing care, but rather on the patient's need for skilled care.") See also, Example 7 at MBPM, Ch. 7 § 40.1.2.1; 42 C.F.R. § 409.44(b)(3)(iii) ("The determination of whether skilled nursing care is reasonable and necessary must be based solely upon the beneficiary's unique condition and individual needs, **without regard to whether the illness or injury is acute, chronic, terminal, or expected to last a long time.**" (Emphasis added.)

D. Outpatient Therapy

1. **Question:** If a physical therapist discontinues a Medicare beneficiary's outpatient therapy because the patient's improvement has "plateaued" after slight improvement and the patient is not expected to return to his or her prior level of function, can the individual continue to receive therapy that will be covered by Medicare?

Answer: Yes. The *Jimmo* Settlement allows patients who are engaged in an outpatient therapy program to continue receiving coverage for those services, even if there is no improvement and if the patient will not return to his or her prior level of function if skilled therapy continues to be needed to maintain the individual's condition or slow decline.

In addition, even though it may appear that the skills of a therapist are not ordinarily required to perform the specific procedures, skilled therapy is covered if the patient's special medical complication requires the skills of a therapist to ensure proper healing and non-skilled individuals could not safely and effectively carry out the procedures.

The *Jimmo* Settlement specifically states that skilled therapy services are covered when the specialized judgment, knowledge, and skills of a qualified therapist are necessary for performance of a maintenance program. If the non-skilled personnel cannot ensure the maintenance of the patient's condition, therapy is reasonable and necessary.

Note: Be the order for the individual's therapy states the goal is to maintain the individual's condition or slow decline. If the therapy was originally ordered to improve the condition, get a new order with the goal to maintain or slow deterioration.

> **Example:** A Medicare beneficiary who sustained orthopedic trauma in a car accident and who shows improvement over the first several weeks of outpatient therapy and then plateaus without returning to his or her prior level of function may continue therapy designed to ensure the compromised limbs are exposed to the necessary range of motion and remain in the correct alignment.

See, *Jimmo* Settlement at pp. 11-12; MBPM, Ch. 15, § 220.2.

2. **Question:** If a Medicare beneficiary exceeds the therapy cap for outpatient therapy services and requires those services to maintain his or her current function, can Medicare coverage continue?

Answer: Yes. The *Jimmo* Settlement allows patients to receive Medicare coverage for necessary outpatient therapy maintenance programs by skilled providers. Medicare is available when the therapy is required to maintain the patient's functioning and requires a qualified therapist to be safe and effective. In such circumstances, the provider should seek an "Exception" to the therapy cap to

continue therapy services. In addition, patients who exceed $3,700 in therapy expenditures can seek a further review to determine if the outpatient therapy services continue to be reasonable and necessary.

> **Example:** A patient with Parkinson's disease who maintains his current function through regular outpatient physical therapy and speech language pathology should seek an Exception to the therapy cap (through his provider) once the cap is reached.

See, *Jimmo* Settlement at pp. 11-12; American Taxpayer Relief Act of 2012, Pub. L. No.112-240, 126 Stat. 2313, §603.

3. **Question:** Can a one-time consultation with a skilled therapist regarding instructions for self-care be covered by Medicare?

Answer: Yes. The *Jimmo* Settlement states that the establishment of a maintenance program by a qualified therapist and the instruction of the beneficiary regarding a maintenance program is covered to the extent the specialized knowledge and judgment of the therapist is required. As there may be certain exercises and treatments the beneficiary can learn through the skills of the therapist, a one-time consultation would be covered.

> **Example:** A patient with arthritis that causes difficulty with ambulation may require an outpatient therapy session to learn targeted exercises he can do on his own to improve his walking.

See, *Jimmo* Settlement at pp. 11-12; MBPM, Ch. 15, § 220.2.D.

4. **Question:** Can Medicare coverage continue for outpatient therapy if a physician prescribes the therapy to a Medicare beneficiary to prevent or slow further deterioration, even if after several weeks of therapy there is some slight deterioration?

Answer: Yes. Under the *Jimmo* Settlement, Medicare coverage for outpatient therapy depends on the beneficiary's need for skilled care by a qualified therapist. The beneficiary's potential for improvement is not the determining factor for coverage. Therapy to maintain a patient's condition or to prevent or slow further deterioration is covered if the therapeutic procedures require a qualified therapist to be safe and effective. The issue to determine coverage is not whether the patient improves, but whether the patient requires skilled services.

> **Example:** A patient with diabetic neuropathy and a recent lower limb amputation who receives outpatient therapy to prevent further decline in her mobility but still experiences a slight decline following initiation of the therapy services is still covered for the care under Medicare if, without the therapy, the patient's mobility would decline more markedly or rapidly.

See, *Jimmo* Settlement at pp. 11-12; MBPM, Ch. 15, § 220.2.

5. **Question:** Can an evaluation of an already-established maintenance plan be covered for a Medicare beneficiary who needs to be assessed for assistive equipment and other therapies in order to prevent deterioration?

Answer: Yes. Under the *Jimmo* Settlement, necessary periodic reevaluations of maintenance programs by a qualified therapist are covered to the degree that the specialized knowledge and judgment of the therapist is required. A reevaluation of a maintenance program to assess for the need for assistive devices and prevent deterioration is a skill that requires the specialized knowledge of a therapist. If the therapist determines that the program needs revision based on the patient's new developments, the establishment of a new maintenance program would also be covered.

> **Example:** A patient with functional and cognitive deficits following a traumatic brain injury who carries out therapy on his own as part of a maintenance plan may have his therapy plan reevaluated either (1) on a periodic basis to ensure that it is properly addressing his needs or (2) following some change in his condition that may necessitate corresponding changes to the therapy program.

See, *Jimmo* Settlement at pp. 11-12; MBPM, Ch. 15, § 220.2.

6. **Question:** If a physical therapist discontinues a Medicare beneficiary's outpatient therapy because the patient's improvement has plateaued after slight improvement and the patient is not expected to return to his or her prior level of function, can a physician/authorized practitioner prescribe additional therapy?

Answer: Yes. The *Jimmo* Settlement allows patients who are engaged in an outpatient therapy program to continue receiving coverage for those services, even if there is no improvement and if the patient will not return to his or her prior level of function. In addition, even though it may appear that the skills of a therapist are not ordinarily required to perform the specific procedures, skilled therapy is covered if the patient's special medical complication requires the skills of a therapist to ensure proper healing and non-skilled personnel or caregivers would not safely and effectively carry out the procedures. The *Jimmo* Settlement specifically states that skilled therapy services are covered when the specialized judgment, knowledge, and skills of a qualified therapist are necessary for performance of a maintenance program. If non-skilled personnel cannot ensure the necessary maintenance care is safe and effective, the therapy can be covered by Medicare.

> **Example:** A Medicare beneficiary who sustained an orthopedic trauma in a car accident and who shows improvement over the first several weeks of outpatient therapy and then plateaus without returning to his or her prior level of function may continue therapy designed to ensure the compromised limbs are exposed to the necessary range of motion and remain in the correct alignment.

See, *Jimmo* Settlement at pp. 11-12; MBPM, Ch. 15, § 220.2.

E. Inpatient Rehabilitation Facilities

1. **Question:** Can an inpatient rehabilitation hospital (IRF) stay be covered if a patient is not able to return to his or her prior level of functioning but can achieve some improvement in function through IRF care?

Answer: Yes. Under the *Jimmo* Settlement, a Medicare beneficiary's claim for inpatient rehabilitation hospital care cannot be denied simply because the patient is not expected to return to his or her prior level of functioning. While the IRF regulations do include a modified improvement

standard, the patient must only *be reasonably expected to make measurable improvement that will be of practical value to improve the patient's functional capacity or adaptation to impairments*. The expected improvement is to be accomplished within a reasonable period of time. Therefore, as long as there is a reasonable expectation that the patient can make some improvement in functional status, it is not required that the patient will not be able to return to his or her prior level of functioning.

Example: If a patient who required amputation of a lower limb is not expected to be able to return to her pre-amputation functional status, IRF care may still be reasonable and necessary if the rehabilitation physician believes that she will make measurable improvement of practical value.[1]

See, 42 C.F.R. § 412.622(a)(3)(ii); *Jimmo* Settlement at 14; 74 Fed. Reg. 39,762, 39,793 (Aug. 7, 2009); MBPM, Ch.1, §110.3.

2. **Question:** Can inpatient rehabilitation be covered for a Medicare beneficiary who is currently making improvement, but will never be able to independently care for him- or herself?

   Answer: Yes. The *Jimmo* Settlement states that inpatient rehabilitation claims cannot be denied based simply based on the fact that a patient can never achieve complete independence with self-care. In an IRF, a patient's medical record only needs to demonstrate a reasonable expectation that a measurable improvement will be possible within a reasonable period of time. The patient's medical record must indicate the nature and degree of expected improvement and the expected length of time to achieve the improvement in order to properly track whether an inpatient rehabilitation stay is reasonable and necessary.

   Example: If it is clear that a Medicare patient who has experienced a traumatic brain injury will not be able to be fully independent with self-care at the conclusion of therapy services, an IRF stay may still be medically reasonable and necessary, and covered by Medicare, if measurable improvement of practical value to the individual can be reasonably expected.

   See, *Jimmo* Settlement at pp. 14; MBPM, Ch. 1, § 110.3.

3. **Question:** Can an IRF continue to treat a patient if the patient has shown no improvement but the physician continues to believe there is a reasonable expectation that the patient will demonstrate measurable improvement?

Answer: Yes. In order for the patient to receive a Medicare-covered inpatient rehabilitation stay, the patient's medical record must demonstrate ongoing and sustainable improvement that is of practical value to the patient. However, if the expectation for measurable improvement existed at the time of the patient's admission and can realistically be documented in the medical record even after no initial improvement, it is possible the IRF stay may be covered.

Example: If a formerly independent, debilitated patient does not make measurable improvement within the first seven days of an IRF stay but the physician documents the continued expectation

[1] Of course, as in other care settings, the IRF patient must also satisfy the other Medicare coverage criteria for IRF care in order for it to be covered. These FAQs assume that the other criteria are satisfied in each example given and, therefore, focus solely on the issues raised by the requirement for a reasonably expectation of measurable improvement.

for measurable improvement of practical value, with support from the medical record, Medicare coverage can continue.

See, MBPM, Ch. 1, § 110.3; *Jimmo* Settlement at p. 14.

4. **Question:** If the patient does not improve at all over the entire period of his or her stay, must the entire stay be denied as a covered Medicare service?

Answer: No. The entire stay should not necessarily be denied coverage as long as, when the patient was admitted, the medical record demonstrated a reasonable expectation that there would be a measurable, practical improvement in the patient's functional condition over a predetermined and reasonable period of time. If the patient does not achieve a measurable improvement by the expected period of time, and the physician no longer has an expectation that the patient would improve, any further inpatient care would no longer be covered. However, as long as there was an expectation of improvement during the inpatient stay, regardless of whether there was actual improvement at any time, the stay can be covered as necessary and reasonable.

> **Example:** If a patient who had a stroke was initially determined to be appropriate for IRF care but then did not progress during the stay and was determined by the physician at the first team meeting to no longer have a reasonable expectation of improvement, subsequent days, but not the prior period, (following a reasonable amount of time to arrange for transfer or discharge) would no longer be covered.

See, MBPM, Ch. 1, § 110.3.

5. **Question:** Can inpatient rehabilitation continue to be covered for a Medicare beneficiary if he or she has achieved an improvement in functionality, will soon be discharged, but is undergoing instruction and observation over the last few days of their stay?

Answer: Yes. The *Jimmo* Settlement states that daily physical improvement is not required to retain covered services. This is true even in an inpatient rehabilitation setting, as the requirements for improvement are only measured over a prescribed period of time. During a long stay, many treatment plans will move from traditional therapeutic services to patient education, equipment training, and other similar instruction to prepare patients for the return home. The counseling and instruction towards getting the patient ready to go home is considered a part of the therapy and meets the end goal of enabling the patient to safely live at home.

> **Example:** If a patient who had a stroke and was admitted to an IRF for treatment improves to the point of being medically and functionally ready for discharge, she may receive Medicare for several more days in the IRF if those days are necessary to counsel and instruct the patient (and his or her caregivers) regarding safely returning to home and home exercise programs or use of mobility equipment.

See, MBPM, Ch. 1, § 110.3

6. **Question:** Can an IRF admit a functionally impaired patient whose function is deteriorating in order to prevent further deterioration and teach the patient new skills?

Answer: Yes. Pursuant to the *Jimmo* Settlement, Medicare coverage for IRF care should not be denied because a patient is not expected to achieve complete independence in the domain of self-care or because a patient is not expected to return to his or her prior level of functioning. In addition, the IRF regulations state that Medicare will only cover an IRF claim if the patient is expected to make a measurable improvement that will be of practical value to improve the patient's functional capacity or adaptation to impairments. Even though the IRF regulations require an expected measurable improvement, if the stay is for the purpose of the prevention of deterioration, the expected prevention of deterioration itself is a measurable improvement over what the patient's function would have been if he or she had not been admitted for an inpatient stay. In addition, Medicare can be available if the patient makes an expected, measurable improvement to improve his or her adaptation to impairments. Therefore, assuming the other coverage criteria are met, the stay can be covered by Medicare.

> **Example:** A medically compromised patient with a long-term spinal cord injury who starts to have increased difficulty performing activities of daily living despite a maintenance therapy program may be appropriate for IRF care if his physician has a reasonable expectation that inpatient therapy will prevent the patient's further deterioration, thereby achieving measurable improvement of practical value for the patient.

See, 42 C.F.R. § 412.622(a)(3)(ii); *Jimmo* Settlement at p. 14; 74 Fed. Reg. at 39,793; MBPM, Ch. 1, § 110.3.

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MEDICARE ENROLLMENT & APPEALS GROUP

***"Jimmo Settlement**

Important Message About the Jimmo Settlement

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 Agreement 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 Agreement 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 *Jimmo* Settlement Agreement 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."

[Emphasis added.]

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*Court Mandated Statement from Centers for Medicare & Medicaid Services, CMS.gov (https://www.cms.gov/medicare/settlements/jimmo); last visited 9/12/2023)

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MEDICARE ENROLLMENT & APPEALS GROUP

DATE: April 8, 2013

TO: Medicare Advantage Organizations, Medicare Advantage-Prescription Drug, Section 1876 Cost Organizations, and PACE Plans

FROM: Arrah Tabe-Bedward
Acting Director, Medicare Enrollment & Appeals Group

SUBJECT: *Jimmo v. Sebelius* Settlement Agreement Fact Sheet

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*, in which the plaintiffs alleged that Medicare contractors were inappropriately applying an "Improvement Standard" in making claims determinations for Medicare coverage involving skilled care (e.g., the skilled nursing facility (SNF), home health (HH), 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.

CMS has posted a Fact Sheet that provides details on the case and a list of activities CMS will be conducting under the terms of the settlement agreement. 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. To that end, Medicare Advantage organizations are strongly encouraged to review the Fact Sheet and to ensure that claims for these skilled services are being properly reviewed and adjudicated.

The *Jimmo* Fact Sheet can be accessed here:

http://www.cms.gov/Medicare/Medicare-Fee-for-Service Payment/SNFPPS/Downloads/JimmoFactSheet.pdf