

Medicare to End 'Improve or You're Out' Standard for Coverage of Skilled Services

In a major change in Medicare policy, the Obama administration has provisionally agreed to end Medicare's longstanding practice of requiring that beneficiaries with chronic conditions and disabilities show a likelihood of improvement in order to receive coverage of skilled care and therapy services. The policy shift will affect beneficiaries with conditions like multiple sclerosis, Alzheimer's disease, Parkinson's disease, ALS (Lou Gehrig's disease), diabetes, hypertension, arthritis, heart disease, and stroke.

For about 30 years, home health agencies and nursing homes that contract with Medicare have routinely terminated the Medicare coverage of a beneficiary who has stopped improving, even though nothing in the Medicare statute or its regulations says improvement is required for continued skilled care. Advocates charged that Medicare contractors have instead used a covert "rule of thumb" known as the "Improvement Standard" to illegally deny coverage to such patients. Once beneficiaries failed to show progress, contractors claimed they could deliver only "custodial care," which Medicare does not cover.

In January 2011, the Center for Medicare Advocacy and Vermont Legal Aid filed a class action lawsuit, *Jimmo v. Sebelius*, against the Obama administration in federal court aimed at ending the government's use of the improvement standard. After the court refused the government's request to dismiss the case, and the administration lost in similar individual cases in Pennsylvania and Vermont, it decided to settle.

As part of the proposed settlement, which the federal judge must still formally approve, Medicare will revise its manual that contractors follow to clarify that Medicare coverage of skilled nursing and therapy services "does not turn on the presence or absence of an individual's potential for improvement" but rather depends on whether or not the beneficiary needs skilled care, even if it would simply maintain the beneficiary's current condition or slow further deterioration.

In addition, under the settlement Medicare beneficiaries who received a final denial of Medicare coverage after January 18, 2011 (the date the lawsuit was filed) are entitled to a review of their claim denial.

"The *Jimmo* settlement provides hope for thousands of older and disabled people with chronic and long-term conditions who will now have a fair opportunity to get access to Medicare and necessary health care," said Judith Stein, Executive Director of the Center for Medicare Advocacy.