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Eli's Rehab Report

Practice Pointers: Take a Closer Look: What Is True 'Skilled Maintenance' Therapy?

'Improvement standard' is obsolete for Medicare, but have your payers said otherwise?

Imagine: A 65-year old female patient was referred to your clinic five months ago for rehab due to a Multiple Sclerosis flare-up, loss of function in the right leg with difficulty walking, and loss of balance. She received four sessions of physical therapy for gait and balance, as well as education for her husband on home exercises and mobility. The patient responded well and was discharged. A week ago, the patient called in reporting a worsening in gait and balance due to the left leg losing function.

What would be your automatic response to the idea of another round of rehab?

Typical answer: "She benefitted from the rehab episode five months ago, but the patient is no longer showing improvement, so Medicare won't reimburse at this point." Right? Wrong.

As of 2013, lack of improvement is no longer acceptable grounds for denying rehab coverage for a Medicare patient despite what your payer says. A landmark federal case, Jimmo vs. Sebelius ruled that Medicare patients can receive coverage for skilled care to maintain a condition or to slow deterioration.

CMA Points Finger at CMS

Now, more than three years after the Jimmo vs. Sebelius settlement, the **Center for Medicare Advocacy** (CMA) has called foul on the **Centers for Medicare & Medicaid Services** (CMS) for not properly educating providers and payers that the "improvement standard" is now obsolete. In fact, the case is back in court, CMA having filed a Motion for Resolution of Non-Compliance.

"We are returning to the Court to ask for relief that CMS has refused to provide," said **Gill Deford**, director of litigation for CMA, and lead counsel for the plaintiffs, in a CMA press release. "We've provided overwhelming evidence that providers and contractors were not educated about the Settlement Agreement and that Medicare beneficiaries were still having their coverage terminated."

"For example, in July one of our clients received a notice denying Medicare and cutting off therapy 'because [of] failure to show progress,'" said **Judith Stein**, co-counsel for plaintiffs and executive director of CMA.

The **American Physical Therapy Association** (APTA) has written a declaration of support for CMA's stance. "We have found that many providers [still] have not received any information regarding the settlement ... or remain confused about the proper application of the skilled maintenance therapy benefit," APTA wrote.

Make Sure Your Definition of 'Maintenance' Matches Medicare's

What does "skilled maintenance therapy" actually mean? When are those denials truly valid? "Whether you do rehabilitative therapy or maintenance therapy, the key from CMS' point of view is it must require the unique skills of a therapist," says **Rick Gawenda, PT,** founder and president of **Gawenda Seminars & Consulting.** "The medical necessity guidelines for maintenance therapy are the same for rehabilitative therapy."

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Example: A Medicare patient has Parkinson's disease. He comes in for three visits, during which the therapist sets up a home exercise program and teaches the family how to assist the patient up and down the steps and into the shower. The therapist also helps order new equipment for the home. The patient is then discharged.

Valid, skilled maintenance therapy would be, for example, if, six months later, the patient has further decline in function that requires the therapist to do a re-evaluation and new care plan. In this case, the therapist might give additional patient and caregiver education and an update to some home equipment.

The goal of maintenance therapy is either to maintain a patient's current level of function or to prevent further decline in their function. "So, a patient with Parkinson's, for example, may continue to decline, but the unique skills of a therapist may be required at certain intervals throughout the year or every few years," Gawenda says.

Critical: Skilled maintenance does not mean you're giving the patient indefinite therapy sessions simply because their condition won't improve. Also, "the absence of a caregiver doesn't mean your skills are required," Gawenda says.

For example, suppose you taught a patient with lymphedema how to do proper dressing and wrapping, but they can't do it without help. "You don't get to keep doing it just because the patient doesn't have a caregiver to help them," Gawenda says.

If the patient or family insists on further assistance, even after they've learned the tasks, you can provide an Advance Beneficiary Notice, or discharge the patient and offer a wellness/prevention program for cash, Gawenda says.

Bottom line: Your question in providing therapy should be whether the patient needs skilled services not whether he will improve or whether he has enough help at home.

Resource: CMA created a self-help packet for Medicare beneficiaries denied on grounds of lack of improvement. Also, see CMS Transmittal 179 for more details on skilled maintenance therapy and detailed case examples in each setting.

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