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CMS Issues Waivers of 3-Day Stay and Spell of Illness – March 14, 2020

On March 14, the Centers for Medicare and Medicaid Services (CMS) issued two waivers to aid skilled nursing facilities in addressing the national COVID-19 outbreak. CMS is waiving both the 3-Day Stay and Spell of Illness requirements - nationally.

These waivers mean that skilled nursing facility (SNF) care without a 3-day inpatient hospital stay will be covered for beneficiaries who experience dislocations or are affected by the COVID-19 outbreak. Due to the current crisis, CMS also is utilizing the authority under section 1812(f) providing renewed SNF coverage to beneficiaries without starting a new spell of illness and allowing them to receive up to an additional 100 days of SNF Part A coverage. More detail and background information are provided below.

Overview

When the President declares a disaster or emergency under the Stafford Act or National Emergencies Act and the U.S. Department of Health and Human Services (DHHS) Secretary declares a public health emergency under Section 319 of the Public Health Service Act, the Secretary is authorized to take certain actions in addition to regular authorities. For example, under section 1135 of the Social Security Act, the Secretary may temporarily waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements to ensure that sufficient health care items and services are available to meet the needs of beneficiaries. Today, DHHS has waived the critical SNF provisions.

3-Day Stay Waiver

Section 1861(i) of the Act permits Medicare payment for SNF care only when a beneficiary first has an inpatient hospital stay of at least three consecutive days. Section 1812(f) of the Act allows Medicare to pay for SNF services **without** a 3-day qualifying stay if the Secretary finds that doing so will not increase total payments made under the Medicare program or change the essential acute-care nature of the SNF benefit. Based upon the President's actions and the Secretary's authority under Section 1135 and Section 1812(f), SNF care without a 3-day inpatient hospital stay will be covered for beneficiaries who experience dislocations or are affected by the emergency.

Spell of Illness Waiver – March 14, 2020

In addition, CMS is recognizing special circumstances for certain beneficiaries who, prior to the current emergency, had either begun or were ready to begin the process of ending their spell of illness after utilizing all of their available SNF benefit days. Existing Medicare regulations state that these beneficiaries cannot receive additional SNF benefits until they establish a new benefit period (i.e., by breaking the spell of illness by being discharged to a custodial care or

noninstitutional setting for at least 60 days). Due to the current crisis, CMS also is utilizing the authority under section 1812(f) providing renewed SNF coverage to beneficiaries without starting a new spell of illness and allowing them to receive up to an additional 100 days of SNF Part A coverage. The policy applies only for those beneficiaries who have been delayed or prevented by the emergency itself from beginning or completing the process of ending their current benefit period and renewing their SNF benefits.

The CMS Waiver is below.



MAR 13 2020

Administrator

Washington, DC 20201

TO: The Secretary
Through: DS _____
COS _____
ES _____

FROM: Administrator
Centers for Medicare & Medicaid Services

SUBJECT: Findings Concerning Section 1812(f) of the Social Security Act in Response to the Effects of the 2019-Novel Coronavirus (COVID-19) Outbreak

These findings are based on the public health emergency that you declared under Section 319 of the Public Health Service Act as a result of the consequences of the above-captioned emergency, and are effective with respect to the timeframes and geographic areas specified in the waiver(s) issued under section 1135 of the Social Security Act (the Act) in response to that emergency. Accordingly, both the effective date(s) and expiration date(s) for these temporary emergency policies are the same as those specified pursuant to the corresponding section 1135 waiver(s).

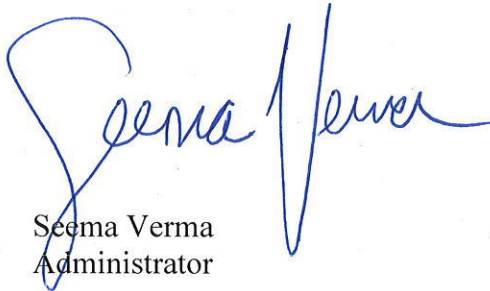
Section 1861(i) of the Act permits Medicare payment for skilled nursing facility (SNF) care only when a beneficiary first has an inpatient hospital stay of at least 3 consecutive days. Section 1812(f) of the Act allows Medicare to pay for SNF services without a 3-day qualifying stay if the Secretary of Health and Human Services finds that doing so will not increase total payments made under the Medicare program or change the essential acute-care nature of the SNF benefit. I find that covering SNF care without a 3-day inpatient hospital stay only for beneficiaries affected by the above-captioned emergency (with respect to the timeframes and geographic areas specified in the waiver(s) issued under section 1135 of the Act as a result of that emergency) would not increase total payments made under the Medicare program and would not change the essential acute-care nature of the Medicare SNF benefit. Therefore, SNF care without a 3-day inpatient hospital stay will be covered for beneficiaries who experience dislocations or are otherwise affected by the emergency, such as those who are (1) evacuated from a nursing home in the emergency area, (2) discharged from a hospital (in the emergency or receiving locations) in order to provide care to more seriously ill patients, or (3) need SNF care as a result of the emergency, regardless of whether that individual was in a hospital or nursing home prior to the emergency.

In addition, we will recognize special circumstances for certain beneficiaries who, prior to the current emergency, had either begun or were ready to begin the process of ending their spell of illness after utilizing all of their available SNF benefit days. Existing Medicare regulations state that these beneficiaries cannot receive additional SNF benefits until they establish a new benefit period (i.e., by breaking the spell of illness by being discharged to a custodial care or non-institutional setting for at least 60 days). However, the dislocations resulting from the emergency (including emergency-related measures that could result in discharge delays) may delay or prevent such beneficiaries from commencing or completing the process of ending their current benefit period and renewing their SNF benefits that would have occurred under normal

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circumstances. Accordingly, I find that covering additional SNF care without requiring a break in the spell of illness for those beneficiaries in connection with the above-captioned emergency would not increase total payments made under the Medicare program and would not change the essential acute-care nature of the Medicare SNF benefit. Therefore, we are also utilizing the authority under section 1812(f) of the Act to provide renewed coverage for extended care services which will not first require starting a new spell of illness for such beneficiaries, who can then receive up to an additional 100 days of SNF Part A coverage for care needed as a result of the above-captioned emergency. This policy will apply only for those beneficiaries who have been delayed or prevented by the emergency itself from commencing or completing the process of ending their current benefit period and renewing their SNF benefits that would have occurred under normal circumstances.

Any patients discharged from a hospital to the SNF or admitted directly from home to the SNF should be managed in accordance with the latest CMS or CDC guidance.



Seema Verma
Administrator