Understanding How Medicare Determines Payment for Your Therapy Services in Nursing Homes or Home Health Care

A Resource for Patients

If you or your loved one is receiving physical therapy, occupational therapy, and/or speech-language pathology services in a nursing home or if you are receiving care at home by a home health agency, Medicare implemented major payment changes for those services that you should be aware of.

Therapy Services in Nursing Homes

On October 1, 2019, Medicare shifted to a new payment system called the Patient Driven Payment Model (PDPM) for all skilled nursing facilities or SNFs. The Medicare Part A SNF benefit covers 100 days (about three and a half months) of care, but residents may alternatively receive coverage for SNF services under their Part B benefit.

Therapy Services at Home

On January 1, 2020, Medicare applied a similar payment change called the Patient Driven Groupings Model (PDGM) for therapy services managed by home health agencies (often called HHAs) provided in your home.

Patient-Driven Care

Medicare implemented these payment changes to support and promote patient-focused care as the most appropriate way to pay for services: by basing care on the unique characteristics, needs, and goals of each patient. These models for patient-focused care were supported by the three national associations representing physical therapists, physical therapist assistants, and physical therapy students (American Physical Therapy Association); occupational therapists, occupational therapy assistants, and occupational therapy students (American Occupational Therapy Association); and speech-language pathologists (American Speech-Language-Hearing Association).

Unfortunately, some SNFs and HHAs continue to use this payment model transition to stint on care, which may put patients' health at risk. Medicare requires that SNFs and HHAs provide medically necessary physical therapy, occupational therapy, and speech-language pathology services, regardless of the diagnosis.

Your Rights as a Patient

SNFs and HHAs that provide services to Medicare patients must uphold the rights of patients such as, but not limited to:

- including patients in the care planning process;

- identifying patient preferences for how they communicate (both receiving and sharing information); and
- ensuring the patient can obtain the highest level of function practicable.

Failure to uphold these standards can lead to a variety of consequences for the SNF or HHA, such as financial penalties or even removal from the Medicare program.

Unfortunately, only the patient or the caregiver can challenge potential violations of Medicare requirements for upholding patient rights, which can be difficult if the patient or caregiver has a cognitive impairment or the caregiver does not have regular access to the patient (e.g., the caregiver is an adult child of the patient and does not reside in the same city as the patient).

If you or your caregiver feels that your rights were violated, you should report this to the SNF or HHA, as well as your physician, as soon as possible to ensure all medically necessary services and items (e.g., speech-generating devices) are provided to you in a timely fashion. Find more details on how to report potential violation of your rights below.

To protect your rights and ensure that you are receiving necessary therapy, you should be aware of the following inaccurate statements commonly shared with patients.

Statement from SNF/HHA: Medicare limits the amount of therapy Medicare beneficiaries can receive.

> FACT: Medicare does not limit the amount of therapy you can receive in a SNF or from an HHA, and the clinical judgment of your therapist should be a key factor in determining the amount of therapy you receive. However, some SNFs and HHAs use computer programs that "predict" the amount of therapy a patient needs in order to dictate visits without accounting for the clinical judgment of your treating therapist, your physician's orders, or your care preferences as the patient. This may force therapists to restrict the amount of therapy provided. For example, you may be told that Medicare restricts therapy minutes or visits provided, but Medicare does not restrict therapy to 15-minute sessions or three home health visits. Care decisions should be made by the interdisciplinary care team in consultation with patients, not by computer algorithms.

Statement from SNF/HHA: Medicare dictates what forms of therapy a therapist can deliver. For example, you may be told that Medicare states that only occupational therapists or speech-language pathologists can deliver cognitive treatment.

> FACT: Medicare defers to state law and the scope of practice of the treating clinician. For example, an occupational therapist and a speech-language pathologist could both address distinct traits of cognitive deficits within their respective scopes of practice as functionally necessary for the patient.

Statement from SNF/HHA: A portion of SNF therapy treatment must be provided in a group.

> FACT: Medicare does not require patients to receive group therapy in a SNF setting. Group therapy may be clinically indicated for a patient. In those cases, Medicare allows up to 25% of the patient's treatment to be provided either in a group (two to six individuals) and/or as

concurrent (two individuals) during the SNF stay. Medicare expects that the needs of the patient and the clinical judgment of the clinicians for the most effective therapeutic intervention will drive the decision whether to use individual, concurrent, and/or group treatment. The clinician or SNF cannot and should not use group therapy to manage schedules or for the convenience of the clinician or SNF. Consider this decision tree to better understand when group or concurrent therapy is appropriate.

Statement from SNF/HHA: Medicare will only pay for therapy services designed to improve a patient's condition.

FACT: Medicare will pay for services designed to improve or maintain function for the patient. Improvement or progress is not required. Medicare must cover maintenance therapy, when medically appropriate, under a legal settlement called Jimmo v. Sebelius.

Statement from SNF/HHA: Medicare does not pay for therapy for certain diagnoses.

FACT: Certain diagnoses or clinical conditions trigger additional payment to the SNF or HHA for therapy services, but Medicare requires SNFs and HHAs to provide all medically necessary services, including therapy services, to patients regardless of their diagnoses. The Centers for Medicare & Medicaid Services (CMS) has stated, "While these clinical groups represent the primary reason for home health services during a 30-day period of care, this does not mean that they represent the only reason for home health services. While there are clinical groups where the primary reason for home health services is for therapy (for example, Musculoskeletal Rehabilitation) and other clinical groups where the primary reason for home health services is for nursing (for example, Complex Nursing Interventions), home health remains a multidisciplinary benefit and payment is bundled to cover all necessary home health services identified on the individualized home health plan of care."

Statement from HHA: Medicare does not cover home health services unless the patient was previously in a hospital or other institutional setting.

FACT: Under PDGM, a payment differential exists based on the source of admission (whether you came from the community or an institution like a hospital), but patients remain eligible for home health regardless of the source of admission or where they reside prior to starting an episode of care.

Statement from HHA: Medicare won't reimburse for any home health care services that exceed a total of 30 days of service.

FACT: While the unit of payment has changed to a 30-day period of care instead of the previous 60-day episode of care effective January 1, 2020, lengths of care that exceed 30 days of service may be medically necessary and are covered by Medicare. For example, a patient may require a total of 60 days of home health care or more. Medicare makes

payments on a 30-day cycle, with a lower payment made for the second 30-day payment cycle. Some HHAs may inappropriately discharge patients within the first 30 days to avoid the lower reimbursement of the second 30-day billing cycle.

Statement from SNF: Medicare dictates the number of Part A covered days.

FACT: Medicare pays for up to 100 days of Part A skilled nursing services. Depending on your condition and the cost of care, a SNF might decide it's financially beneficial to either discharge you as quickly as possible to minimize their costs or keep you longer than necessary to maximize their payment. Decisions on your length of stay in a SNF should be made by the clinicians providing your care and not based on financial calculations.

If you think that your SNF or HHA has inappropriately restricted access to therapy services, you have options to get help.

- Contact the director of therapy to help empower your therapist to provide care in line with their clinical assessment.
- Contact your physician and ask them to help you get the care that they ordered, that you need, and that you are entitled to receive.
- Register a complaint with the SNF or HHA compliance officer/staff or a manager. In most states, patients can file SNF complaints with state ombudsman offices and HHA complaints with state survey and certification agencies.
- Contact Medicare at 1-800-Medicare (1-800-633-4227).
- If you receive an advanced beneficiary notice (ABN) from the HHA or SNF indicating a denial or stop of service, CMS has information about your rights to appeal.
- Consider getting services from a different SNF or HHA, if possible.
- Reach out to a consumer advocacy group to share your story and get help with accessing your medically necessary care:
  - Center for Medicare Advocacy: provides education, advocacy and legal assistance to help older people and people with disabilities obtain access to Medicare and quality health care.
  - Medicare Rights Center: helps people with Medicare understand their rights and benefits, navigate the Medicare system, and secure the quality health care they deserve.
  - Senior Medicare Patrol: empowers and assists Medicare beneficiaries, their families, and caregivers to prevent, detect, and report health care fraud, errors, and abuse through outreach, counseling, and education.
  - Administration for Community Living: links those who need assistance with state and local agencies on aging, as well as community-based organizations that serve older adults and their caregivers.
  - American Speech-Language-Hearing Association: provides information about the types of conditions speech-language pathologists can assist in treating.