



## Medicare Coverage for Maintenance Therapy: CMS Implements Changes to Manual Provisions in Wake of *Jimmo v. Sebelius* Settlement Agreement

For years, the Centers for Medicare and Medicaid Services' ("CMS") contractors used an unwritten "improvement standard" to determine and deny coverage for Skilled Nursing Facility ("SNF"), home health, and outpatient therapy services. As a result of a [settlement in a class-action lawsuit](#) filed to challenge the application of this "improvement standard," *Jimmo v. Sebelius*, CMS has revised sections of Chapter 15 of the [Medicare Benefit Policy Manual](#) (the "Manual") to allow for coverage of maintenance therapy in cases where no improvement is expected, a major shift in policy favorable to the skilled therapy community.

The Manual now distinguishes between "Rehabilitative Therapy" and "Maintenance Programs." "Rehabilitative Therapy" services are aimed at recovery or improvement in function and restoration to a previous level of health, while "Maintenance Programs" may be used to maximize or maintain a beneficiary's progress or to prevent or slow further deterioration in function due to a disease or illness. Coverage of skilled therapy services depends on the provider conducting an individualized assessment of the patient which demonstrates that skilled care is "needed in order to safely and effectively maintain the beneficiary at his or her maximum practicable level of function." As always, if the beneficiary's care needs can be addressed by nonskilled personnel, skilled services are not covered. Also, beneficiaries in an Inpatient Rehabilitation Facility ("IRF") or Comprehensive Outpatient Therapy Facility ("CORF") setting must still be reasonably expected to improve, as the coverage requirements for these settings include an expectation of improvement.

In a [recent MLN Matters article](#), CMS stated that these revisions are meant only "to clarify Medicare's longstanding policy" and "[do] not represent an expansion of coverage." In reality, CMS' contractor's imposition of the unwritten "improvement standard" forced many skilled therapy providers to discharge patients from therapy when the patient no longer had room for improvement. Now, those providers may provide—and bill for—maintenance therapy provided to Medicare beneficiaries.

If you have questions regarding Medicare coverage for maintenance therapy services and how this change affects your organization, please contact a member of HDJN's Reimbursement team:

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