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Maintenance Therapy in Home Health Revisited: Part 1

Kenneth L Miller, PT, DPT

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continued[®]

Learning Outcomes

Upon completion of this two part course, participants will be able to:

1. Explain Medicare Regulations pertaining to therapy provision in the home health setting
2. Describe the difference between restorative and maintenance therapy
3. Describe the home health G-codes for therapy billing and related EMR service codes
4. List documentation criteria for maintenance care in home health
5. Identify OASIS data to justify maintenance level therapy provision

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continued

Pre Test

- TRUE/FALSE. Only progressive neurological conditions are covered for maintenance therapy.
- TRUE/FALSE. Maintenance episodes are included in home health STAR Ratings.
- TRUE/FALSE. If a patient does not have a caregiver to perform maintenance program, a therapist is allowed to stay in and do it indefinitely.

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continued

Urban legend...

Have you heard these comments?

- “Medicare does not cover maintenance therapy.”
- “Only Medicaid covers maintenance therapy.”
- “You need Medicaid to keep therapy going.”
- “I read the NY Times article. You can keep coming forever.”

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Background

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Settlement Timeline – Jan 18, 2011

Class Action Suit filed in Rutland, Vermont



Glenda Jimmo

The Center for Medicare Advocacy, long aware of the illegal and unfair practice that it coins the "Improvement Standard" realizes, as cases, including Glenda Jimmo's, continue to arise, that legal action is needed to stop the practice of denying beneficiaries Medicare because they aren't improving.

The suit is filed against Kathleen Sebelius, Secretary of Health and Human Services, on behalf of six beneficiary plaintiffs and seven national organization plaintiffs harmed by the improvement standard.

<http://www.medicareadvocacy.org/medicare-info/improvement-standard/timeline-of-the-improvement-standard/> Accessed 8/13/18.

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Jimmo v. Sebelius

- January 24, 2013
- U. S. District Court for the District of Vermont approved a settlement agreement
- Plaintiffs alleged that Medicare contractors **were inappropriately applying an “Improvement Standard”** in making claims determinations for Medicare coverage involving skilled care (e.g., **the skilled nursing facility (SNF), home health (HH), and outpatient therapy (OPT) benefits**).

“The **settlement agreement** sets forth a series of specific steps for the Centers for Medicare & Medicaid Services (CMS) to undertake, including issuing **clarifications to existing program** guidance and new educational material on this subject. The goal of this settlement agreement is to ensure that claims are correctly adjudicated in accordance with existing Medicare policy, so that Medicare beneficiaries receive the full coverage to which they are entitled.”

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NY TIMES – Oct 22, 2012

- New York Times Story Sparks National Coverage
 - A front page feature article on The New York Times, **“Settlement Eases Rules for Some Medicare Patients”** by Robert Pear brings national attention to the proposed settlement and its implications for beneficiaries and their families.



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continued

Urban Legend...

The New York Times

“Tens of thousands of people with chronic conditions and disabilities may find it easier to qualify for Medicare coverage of potentially costly home health care, skilled nursing home stays and outpatient therapy under policy changes planned by the Obama administration.”

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continued

Settlement Agreement

The goal of this settlement agreement is to ensure that claims are correctly adjudicated in accordance with existing Medicare policy, so that Medicare beneficiaries receive the full coverage to which they are entitled.

“Nothing in this Settlement Agreement modifies, contracts, or expands the existing eligibility requirements for receiving Medicare coverage.”

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continued

Jimmo Fact Sheet

...beneficiary's lack of restoration potential cannot, in itself, serve as the basis for denying coverage in this context, without regard to an individualized assessment of the beneficiary's medical condition and the reasonableness and necessity of the treatment, care, or services in question.

Conversely, such coverage would **not be** available in a situation where the beneficiary's maintenance care needs can be addressed safely and effectively through the use of nonskilled personnel.

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Jimmo Fact Sheet

Thus, such coverage **depends not on the beneficiary's restoration potential**, but on whether skilled care is required, along with the underlying reasonableness and necessity of the services themselves.

In the case of maintenance therapy, the skills of a therapist are necessary to **maintain, prevent, or slow further deterioration** of the patient's functional status, and the services **cannot** be safely and effectively carried out by the beneficiary personally, or with the assistance of non-therapists, including unskilled caregivers.

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Maintenance Therapy (SNF, HH, OPT)

- Jimmo v. Sebelius
- No Improvement Standard
- The skills of a therapist are necessary to maintain, prevent, or slow further deterioration of the patient's functional status,
- services cannot be safely and effectively carried out by the beneficiary personally, or with the assistance of non-therapists, including unskilled caregivers

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Maintenance Program

“...a program established by a therapist that consists of activities and/or mechanisms that will assist a beneficiary in maximizing or maintaining the progress he or she has made during therapy or to prevent or slow further deterioration due to a disease or illness.”

CMS Transmittal 179. Jan. 14, 2014

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Background

- Federal Regulations
 - Federal Law – HIPAA, HITECH, ACA
 - Federal Agency – HHS, CMS, OSHA, CDC
 - Regulations are dynamic and change
 - CMS – governs Medicare
 - Medicare Benefits Policy Manual
 - Medicare Claims Processing Manual
 - Transmittals
 - Medicare Learning Network (MLN) Matters
 - Medicare Administrative Contractors (MAC) – NGS Medicare; Palmetto GBA; CGS Medicare
 - National Coverage Determination (NCD)
 - Local Coverage Determination (LCD)

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Locating the CMS Regulations for Home Health?

- Code of Federal Regulations (CFR)
 - <https://www.gpo.gov/fdsys/granule/CFR-2011-title42-vol5/CFR-2011-title42-vol5-part484>
- Medicare Benefit Policy Manual (100-02)
 - Chapter 7. Home Health Services
 - <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c07.pdf>
- Medicare Claims Processing Manual (100-04)
 - Chapter 10. Home Health Agency Billing
 - <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c10.pdf>
- Transmittals
 - <https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/index.html>

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continued

Background

- Home Health (Medicare Part A benefit) requires objective testing as per HH PPS Final Rule 2011
 - Effective 4/1/2011
 - Reassessment requirement
 - Mandatory for both restorative and maintenance therapy care
- Home Health Prospective Payment System (HH PPS 2011 Final Rule)
 - 30 day therapy reassessments
 - Time point requirement and content requirements
 - Purpose is to determine the efficacy of the plan of care (POC) towards meeting the established goals

DOES NOT MEAN IMPROVEMENT ONLY!

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continued

OASIS, Functional Reassessments and Maintenance

Q. Do I still have to perform functional reassessments on maintenance cases?

A. **YES.** All reassessments (restorative and maintenance) are to determine **effectiveness** of the plan of care for the established goals.

Q. Do we still need to complete OASIS Assessments?

A. **YES.** Nothing has changed regarding home health agency requirements for OASIS submission at SOC, ROC, Transfer, Follow up and DC.

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Restorative vs. Maintenance

Definitions and Coverage

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CMS Definitions

Restorative/rehabilitative therapy

- Goals and/or purpose is to reverse, in whole or in part a previous loss of function

Maintenance therapy

- Maintain current condition or prevent or slow further deterioration.
- Skilled maintenance therapy may be covered when the pts specific medical complications or the complexity of the therapy procedures require skilled care

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CMS Definition of Stabilization

- A patient **stabilizes** in a specific outcome when the scale value for the health attribute under consideration shows non-worsening in patient condition when the two time points are compared
- If the patient is no more disabled/dependent (that is, has not worsened) at discharge than at start (or resumption) of care, then the patient has stabilized
- Look at Stabilization in...vs Improvement in...
 - Bed transfer
 - Toilet transfer
 - Bathing
 - Grooming

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M1850

(M1850) Transferring: Current ability to move safely from bed to chair, or ability to turn and position self in bed if patient is bedfast.

- 0 – Able to independently transfer.
- 1 - Able to transfer with minimal human assistance or with use of an assistive device.
- 2 - Able to bear weight and pivot during the transfer process but unable to transfer self.
- 3 - Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
- 4 - Bedfast, unable to transfer but is able to turn and position self in bed.
- 5 - Bedfast, unable to transfer and is unable to turn and position self.

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Home Health Therapy Coverage

- Medicare Part A – CHHA
 - 3 options for coverage once COP's and eligibility criteria are met.
 - Homebound criteria, Medical Necessity, Reasonable and Necessary, Under the care of a physician, Intermittent need for services. (Medical Necessity Resource available for free from Home Health Section of APTA website...www.homehealthsection.org).
1. Restorative – Expectation for material improvement.
 2. Maintenance - When designing or establishing a maintenance program, the qualified therapist must teach the patient or the patient's family or caregiver's necessary techniques, exercises or precautions as necessary to treat the illness or injury.
 3. Maintenance - Skilled therapy services are covered when an individualized assessment of the patient's clinical condition demonstrates that the specialized judgment, knowledge, and skills of a qualified therapist ("skilled care") are necessary for the performance of a safe and effective maintenance program.

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Maintenance – 2 options

CMS Expectation is to be completed on the last visit to the home and if not, why not?

Must be inherently complex and can only be performed by a therapist (not an assistant).

- | | |
|--|--|
| <ul style="list-style-type: none"> ▪ When designing or establishing a maintenance program, the qualified therapist must teach the patient or the patient's family or caregiver's necessary techniques, exercises or precautions as necessary to treat the illness or injury. | <ul style="list-style-type: none"> ▪ Maintenance - Skilled therapy services are covered when an individualized assessment of the patient's clinical condition demonstrates that the specialized judgment, knowledge, and skills of a qualified therapist ("skilled care") are necessary for the performance of a safe and effective maintenance program. |
|--|--|

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PPS-2011: Plan of Care & Therapy Treatment Goals

§409.44(c)(1)(i): Therapy goals which are consistent with the evaluation of the patient's function

§409.44(c)(1)(iii): Goals must be measurable, and must pertain directly to the patient's illness or injury, and the patient's resultant impairments

<http://www.gpo.gov/fdsys/pkg/FR-2010-11-17/pdf/2010-27778.pdf>

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PPS-2011: Clinically Acceptable Interventions

§409.44(c)(1): Therapy services must relate directly and specifically to a treatment regimen designed to treat the beneficiary's illness or injury

- **§409.44(c)(1)(ii):** Documentation describing how the course of therapy is in accordance with accepted professional standards of clinical practice

§409.44(c)(2)(E)(1): Objective measurement of the effectiveness of the therapy as it relates to the therapy goals

<http://www.gpo.gov/fdsys/pkg/FR-2010-11-17/pdf/2010-27778.pdf>

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PPS-2011: Clinically Acceptable Interventions

§409.44(iii)(A)(1): Material improvement requires that the clinical record demonstrate that the patient is making **improvement towards goals** when measured against his or her condition at the start of treatment

<http://www.gpo.gov/fdsys/pkg/FR-2010-11-17/pdf/2010-27778.pdf>

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PPS-2011: Clinically Acceptable Interventions

§409.44(iii)(A)(3): Services are not to be considered reasonable and necessary covered therapy services when a patient suffers a transient and easily reversible loss or reduction of function which could reasonably be expected to improve spontaneously as the patient gradually resumes normal activities

✓AKA...Spontaneous Recovery Statute

<http://www.gpo.gov/fdsys/pkg/FR-2010-11-17/pdf/2010-27778.pdf>

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PPS-2011: Rehabilitative v. Maintenance Therapy

§409.44(c)(2)(F)(1,2): A clinically supportable statement why there is an expectation that the goals are attainable in a reasonable and generally predictable period of time if patient does not meet maintenance criteria

- **§409.44(iv):(B)(1)** Therapy progress regresses or plateaus, and the reasons for lack of progress are documented to include justification that continued therapy treatment will lead to resumption of progress toward goals or (2) Maintenance therapy as described in § 409.44(c)(2)(iii)(B) or (C) is needed.

<http://www.gpo.gov/fdsys/pkg/FR-2010-11-17/pdf/2010-27778.pdf>

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PPS-2011: Rehabilitative v. Maintenance Therapy

§409.44(c)(2)(H)(4): In the case of maintenance therapy, the patient is responding to therapy and can meet the goals in a predictable period of time

<http://www.gpo.gov/fdsys/pkg/FR-2010-11-17/pdf/2010-27778.pdf>

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Documentation

- Are the documentation requirements different for restorative vs maintenance therapy?
 - Both require OASIS Assessments
 - Both require Therapy Functional Reassessments
 - Both require meeting the Conditions of Participation
 - Homebound, skilled need, MD orders, intermittent, reasonable and necessary, Inherently Complex
 - Both need to show effectiveness of POC towards meeting goals
 - Restorative - reversing in part or whole a temporary loss of function
 - Maintenance – prevent, or slow further deterioration of the patient's functional status

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What needs to be documented?

- History and physical exam pertinent to the day's visit (including the response or changes in behavior to previously administered skilled services)
- The skilled services applied on the current visit
- The patient/caregiver's immediate response to the skilled services provided
- The plan for the next visit based on the rationale of prior results

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What needs to be documented?

- When the skilled service is being provided to either maintain the patient's condition or prevent or slow further deterioration, the clinical notes must also describe:
- A detailed rationale that explains the need for the skilled service in light of the patient's overall medical condition and experiences,
- The complexity of the service to be performed
- Any other pertinent characteristics of the beneficiary or home.

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Phraseology to Avoid

- Clinical notes should...adequately describe the reaction of a patient to his/her skilled care.
- Clinical notes should...provide a clear picture of the treatment, as well as "next steps" to be taken.
- Vague or subjective descriptions of the patient's care should not be used.
- For example...the following would not adequately describe the need for skilled care:
 - Patient tolerated treatment well
 - Caregiver instructed in medication management
 - Continue with POC

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Utilization of Maintenance Therapy

- PT maintenance – 2017 – 0.72%
- OT maintenance – 2017 – 0.75%
- SLP maintenance – 2017 – 0.48%

- *data provided by Poltilove J. Home Health Line. Home health agencies' use of maintenance therapy 2013-2017. Decision Health. June 18.2018 Vol 43. Issue 25.

- Why so low?
- Two possible reasons – Impact on STAR Ratings and Value Based Purchasing Program

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Case Scenario

- Patient is 80 years old and is a frequent faller due to age related changes.

- Caregiver is refusing to assume patient's care responsibilities stating, "If I don't help, you have to keep coming and I get the aide."

- How is this case handled at your agency?

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continued

Who provides maintenance therapy?

- Only PT's, OT's and SLP's are allowed to provide maintenance therapy visits as each visit consists of an ongoing assessment of the patient's condition.
- PTA's and COTA's are not allowed to perform maintenance therapy by CMS regulations in home health.

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continued

Frequency and Duration

- The amount, frequency, and duration of the services must be reasonable.
- Not specifically defined by CMS.
- However, general consensus is less total visits with lower frequencies.
 - For example, 1-2x per week x 1 week then taper to 1x per week to 1x every 2 weeks.

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continued

Pre Test

- **TRUE/FALSE.** Only progressive neurological conditions are covered for maintenance therapy.
- **TRUE/FALSE.** Maintenance episodes are included in home health STAR Ratings.
- **TRUE/FALSE.** If a patient does not have a caregiver to perform maintenance program, a therapist is allowed to stay in and do it indefinitely.

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continued

Thank You!



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