

Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

---

February 19, 2017

## **Corrective action ordered for non-compliance with eliminating improvement standard**

The Center for Medicare Advocacy ([www.medicareadvocacy.org](http://www.medicareadvocacy.org)) reports that a federal judge overseeing the Settlement Agreement in the Medicare "Improvement Standard" case (*Jimmo v. Burwell*) has ordered the Secretary of Health and Human Services to carry out a Corrective Action plan since the Department and many Medicare contractors remain out of compliance with the terms of the Settlement. Among the ordered corrective actions are a Centers for Medicare and Medicaid (CMS) webpage devoted to *Jimmo*, a published statement disavowing the Improvement Standard, new training for contractors making coverage decisions, and a National Call to explain the policy.

The *Jimmo* settlement was approved in January, 2013 to eliminate the long held belief by skilled care facilities, home care agencies, and outpatient facilities that if the patient does not show signs of "improvement" that Medicare will no longer cover that person's care. Skilled care can still be needed for maintenance to prevent or to slow deterioration of a patient's condition. CMS revised their manuals in December, 2013 to clarify that no "Improvement Standard" is to be applied. Nevertheless the improvement standard continues to be utilized every day. Those who are not knowledgeable about the Settlement are denied Medicare coverage in skilled care facilities after the first 20 days, or less, often resulting in financial hardship and deterioration of their medical condition. Medicare does not provide coverage in a skilled care facility beyond 100 days, but an additional 80 days of therapy can make a significant difference in a beneficiary's condition, perhaps even allowing them to return home.

Clearly the Improvement Standard remains alive and well. The corrective action plan is intended to beef up the education that CMS has done that was patently ineffective to date. It is important to know that although CMS has been charged to work on policy revisions and an education campaign again, the terms of the 2013 settlement are the law of the land. It is not a matter of whether skilled services will allow a Medicare beneficiary to improve, but whether those services are needed to maintain function and to prevent or slow decline. Patients should not hear the words that they "plateaued" but that the skilled services will be provided as long as needed and to the fullest extent possible.

Coverage is available **now** for qualified Medicare beneficiaries. The Centers for Medicare Advocacy ([www.medicareadvocacy.org](http://www.medicareadvocacy.org)) has a fact sheet available for patients and families to use to fight for continued Medicare coverage. There are also "self-help" materials available to use to appeal denial of coverage. Furthermore, there is a process for "re-review" for those Medicare beneficiaries who received a denial of skilled care in a facility, out-patient care or home health care due to the Improvement Standard that became final and non-appealable after January 18, 2011; the Center has forms on their website.

Unfortunately, it is still necessary to for Medicare beneficiaries and their families to help themselves through this process. Hopefully, the Corrective Action will result in increased compliance with the *Jimmo* settlement. In the meantime, know your rights and fight for the care coverage that is needed. If you are unable to access the Center of Medicare Advocacy website or have questions about the process, the elder law attorneys at OWM Law may be able to help.