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THE MERCURY PottsMerc.com

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November 4, 2012

No more plateau for Medicare beneficiaries

Many people are familiar with the often frustrating actions of Medicare providers in home care or long term care settings who state that the beneficiary is no longer entitled to care under his Medicare benefit since he is failing to make progress or has "plateaued". Now, thanks to a recent class action suit, the federal government has provisionally agreed to end the notion that continued Medicare coverage is dependent on the beneficiary improving.

The non-profit Center for Medicare Advocacy (CMA) and Vermont Legal Aid filed a class action to end the so-called "improvement standard." The government also lost in a similar case in Pennsylvania. Judith Stein, director of CMA, stated that the proposed settlement could help persons with chronic conditions such as Alzheimer's disease, multiple sclerosis, Parkinson's disease, stroke, spinal cord injury, and traumatic brain injury. Many of these people do not fit the restrictive improvement standard, since they will not show a "likelihood of medical or functional improvement." However, many persons with chronic conditions would benefit from continued therapy in a nursing facility or at home to maintain their current condition and to prevent further deterioration.

CMA has been fighting this battle for many years, since there is nothing in the Medicare statute or its regulations that says improvement is required for continued care. Therefore, many people who were admitted to a nursing facility for rehabilitation, or were receiving home care under Medicare could not take advantage of the full complement of Medicare days in a nursing home. In fact, many people still at home required admission to an expensive facility and/or were forced to apply for Medicaid. If the judge approves the settlement, a process that might take several months, the Medicare Benefit Policy Manual will be revised so that Medicare contractors will discontinue the "rule of thumb" denying coverage to patients who are not "improving" or showing progress, something that was never defined. The new standard will clearly show that the Medicare coverage of skilled nursing and therapy services "does not turn on the presence or absence of an individual's potential for improvement" but rather on whether the individual needs skilled care, even if just to maintain the current condition without loss of function.

Furthermore, under the settlement, more than 10,000 Medicare beneficiaries who were denied claim for skilled services prior to January 18, 2011, and whose claims were still pending when the lawsuit was filed will have their claims reviewed. This action has been certified as a nationwide class. Medicare expects more costs associated with this change, but advocates say that it may save money also by preventing frequent re-admissions to hospitals and nursing homes.

This settlement will end a decade's long practice that will result in a major benefit to Medicare beneficiaries with chronic conditions. Watch for further developments in this area.