Therapy Plateau No Longer Ends Coverage

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Glenda Jimmo, of Lincoln, Vt., was one of the plaintiffs in the class-action lawsuit challenging the cutoff of Medicare payments for physical therapy and other treatments for patients who were not improving.

Ellen Gorman, 72, a New York psychotherapist, can't walk very far and gets around the city mainly by taxi, "which is really expensive," she said. Twice since 2008 her physical therapy was discontinued because she wasn't progressing. But after a knee replacement last year, she is getting physical therapy again, exercising with her therapist and building up her endurance by walking in the hallway of her Manhattan apartment building.

"Before this, I was getting weaker and weaker, and I just kept caving in," she said.

Because of an action by Congress and a recent court settlement, Medicare probably won't cut off Ms. Gorman's physical therapy again should her progress level off — as long as her doctor says it is medically necessary.

Congress continued for another year a little-known process that allows exceptions to what Medicare pays for physical, occupational and speech therapy. The Medicare limits before the exceptions are $1,900 for physical and speech therapy this year, and $1,900 for occupational therapy.

In addition, the settlement of a class-action lawsuit last month now means that Medicare is prohibited from denying patients coverage for skilled nursing care, home health services or outpatient therapy because they had reached a "plateau," and their conditions were not improving. That will allow people with Medicare who have chronic health problems and disabilities to get the therapy and other skilled care that they need for as long as they need it, if they meet other coverage criteria.

The settlement is expected to affect thousands, and possibly millions, of Medicare beneficiaries with chronic health problems like Parkinson's or Alzheimer's disease, stroke, multiple sclerosis and spinal cord injuries. It could also help families, as well as the overburdened Medicare budget, delay costly nursing home care by enabling seniors to live longer in their own homes.

"Under this settlement, Medicare policy will be clarified to ensure that claims from providers are reimbursed consistently and appropriately and not denied solely based on a rule-of-thumb determination that a beneficiary's condition is not improving," said Fabien Levy, a spokesman for the U. S. Department of Health and Human Services, which includes the Medicare program.

The lawsuit was filed by the Center for Medicare Advocacy and Vermont Legal Aid on behalf of four Medicare patients and five national organizations, including the National Multiple Sclerosis Society, Parkinson's Action Network and the Alzheimer's Association. A tentative settlement had been reached in October and on Jan. 24 a federal judge in Vermont approved the deal.

For seniors getting skilled services at home under a doctor's order, the settlement means Medicare's home health coverage has no time limit, Margaret Murphy told lawyers attending the annual meeting of the National Academy of Elder Law Attorneys in Washington, D. C., shortly after the then-tentative settlement was announced.

The coverage "can go on for years and years, if your doctor orders it," said Ms. Murphy, the center's associate director, who added that patients must be homebound (though not bedbound) and need intermittent care — every couple of days or weeks – that can only be provided by a physical therapist, nurse or other trained health care professional. When physical therapy is provided as part of Medicare's home health benefit, the therapy dollar limits may not apply.

The settlement ensures that nursing home residents will also get coverage for skilled care regardless of improvement, but does not change the duration, which is still limited to up to 100 days per "benefit period." That begins when a patient is admitted as an inpatient to a hospital or a nursing home for skilled care and ends after 60 days without skilled care. The agreement preserves the requirement that they must also have spent at least three days as inpatients in a hospital.

Federal officials say the settlement is not a change in Medicare coverage rules, but that statement may surprise many beneficiaries and providers.

"If someone isn't making progress, I say, 'Listen, I'm sorry but Medicare's not going to cover this so you can come in for a few more sessions but then I have to let you go,' " said Greg Babiec, a physical therapist and one of the owners of Evolve, a private therapy practice with offices in Manhattan and Brooklyn. He had not heard about the settlement.

Beneficiaries also often lose Medicare coverage for outpatient therapy because they hit the payment limit. But under the exceptions process Congress continued for another year, the health care provider can put an additional code on the claim that indicates further treatment above the $1,900 limit is medically necessary. When treatment costs reach $3,700, the provider can submit medical documentation to support a request for another exception to cover 20 more sessions. (A Medicare fact sheet provides some additional details, but has not been updated for 2013.)

In 2011, nearly five million seniors received therapy services at a cost of $5.7 billion, and about one out of every four received an exception to the then-$1,870 limit, according to the Medicare Payment Advisory Commission, an independent government agency that advises Congress.

Just a few hours before the settlement was approved, Rachel DeGolia learned that her 87-year-old father in Chicago was going to have to stop therapy because he stopped showing improvement — again.

"Every time he stops going to physical therapy, he starts to backslide in terms of his balance, his strength and his mobility," said Ms. DeGolia, executive director of the Universal Health Care Action Network, a national advocacy group in Cleveland. His physical therapist did not know Medicare will cover therapy to prevent her father's condition from getting worse.

Under the settlement, Medicare officials have until next January to straighten things out by notifying health care providers. Beneficiaries are not among those to be contacted, and so far the federal officials have not issued a formal statement on the settlement.

But patients don't have to wait for their provider to get the official word, said Judith Stein, the lead attorney for the plaintiffs and executive director of the Center for Medicare Advocacy. "This isn't a clandestine settlement," she said.

The center's Web site offers free "self-help" packets explaining how to challenge a denial of coverage that is based on the lack of improvement. Ms. Stein also advises beneficiaries to show a copy of the settlement — also available from the Web site — to your health care provider at your next physical therapy appointment if you are concerned about losing Medicare coverage. (If you follow this advice, let us know what happens.)

The Web site also explains how beneficiaries can request a review of their case if they received skilled nursing or therapy services in a skilled nursing facility, at home or as outpatients and were denied Medicare coverage because of a lack of progress after Jan. 18, 2011, when the lawsuit was filed.

Dean Lerner relied on the settlement last month to ensure that his brother-in-law would continue to receive Medicare physical therapy coverage.

"My brother-in-law in St. Louis suffers from Parkinson's disease, and has for many years, and my sister is having a devil of a time helping him as his disease progresses," said Mr. Lerner, a retired lawyer and state health official in Des Moines, who is also a Medicaid consultant.

A physical therapist teaches his brother-in-law to stand, turn and use a walker and maintain what little strength he still has. But because his condition hasn't improved, the therapist said Medicare would not pay for additional sessions.

"But for my being an attorney, the outcome may well have been very different, and that shouldn't be," he said. "Why should you have to fight?"