

LEGAL EASE



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.

April 3, 2016

Need for improvement continues to be the Medicare standard

Three years have passed since the landmark case of *Jimmo v. Sebelius* whereby Medicare was to cease denying beneficiaries allowable coverage in facilities and at home simply because they were not "improving." Unfortunately the Centers for Medicare and Medicaid Services (CMS) have not met their obligations under the settlement agreement. As a result, many beneficiaries are still being denied Medicare coverage due to the continued illegal application of the "Improvement" standard. (www.medicareadvocacy.org/jimmo-motion-for-resolution-of-non-compliance/).

The Center for Medicare Advocacy attorneys were able to successfully overturn the decades long practice of denying continued Medicare benefits if the individual was deemed to have "plateaued" or was not capable of further progress. Under Medicare regulations, if a beneficiary had a qualifying hospital stay and was transferred to a facility for rehab, that beneficiary could qualify for up to 100 days of Medicare coverage. In a home care setting, there does not need to be qualifying hospital stay and there is no maximum amount of benefit days. However, by convention, many beneficiaries were limited in their receipt of "covered" benefit days even though there was no rule or law that said this was the standard. The *Jimmo* settlement was supposed to change the rules about the non-existent "improvement" standard; however, three years after the settlement many beneficiaries all over the country are still being told that there needs to be improvement rather than to apply the true standard which is to maintain an individual's condition or to slow deterioration.

The staff at the Center for Medicare Advocacy is very concerned that CMS has not fulfilled its obligation to educate Medicare providers, contractors and adjudicators about the actual standard for continued Medicare coverage. As a result, a Motion for Resolution of Non-Compliance with the Settlement Agreement was filed in court, asking for relief for the many Medicare beneficiaries who have been denied coverage based upon the "improvement standard." CMS has updated policy manuals and provided some educational materials but Judith Stein, Executive Director of the Center for Medicare Advocacy, states that "three years after the *Jimmo* Settlement we are hearing daily about providers who never heard about the case and patients who can't get necessary care based on an Improvement Standard." So far, CMS has refused to take additional action.

The Center for Medicare Advocacy is a national nonprofit, nonpartisan law organization that provides education, advocacy and legal assistance to help older people and people with disabilities obtain access to Medicare and necessary health care. The Center encourages Medicare beneficiaries to appeal the decision when prematurely denied coverage for skilled maintenance nursing or therapy because they are not improving. Their website has a great deal of information and even self-help materials to aid in the process (www.medicareadvocacy.org). There is even information from key provisions of the revised manuals that individuals can show providers. Since CMS is not yet providing the education to all who should know about the real standard, it is up to us to educate providers for ourselves.