DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: NOV - 2 2012

TO: The Secretary
Through: DS_____
COS_____
ES_____

FROM: Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services

SUBJECT: Findings Concerning Section 1812(f) of the Social Security Act

Section 1861(i) of the Social Security Act (the Act) permits Medicare payment for skilled nursing facility (SNF) care only when a beneficiary first has an inpatient hospital stay of at least 3 consecutive days. Section 1812(f) of the Act allows Medicare to pay for SNF services without a 3-day qualifying stay if the Secretary of Health and Human Services finds that doing so will not increase total payments made under the Medicare program or change the essential acute-care nature of the SNF benefit. I find that covering SNF care without a 3-day inpatient hospital stay only for beneficiaries affected by Hurricane Sandy in the State of New Jersey (with respect to the geographic areas and timeframes specified in the waiver(s) issued under section 1135 of the Act as a result of that disaster) would not increase total payments made under the Medicare program and would not change the essential acute-care nature of the Medicare SNF benefit. Therefore, SNF care without a 3-day inpatient hospital stay will be covered for beneficiaries (1) evacuated from a nursing home in the emergency area, (2) discharged from a hospital (in the emergency or receiving locations) in order to provide care to more seriously ill patients, or (3) who need SNF care as a result of the emergency, regardless of whether that individual was in a hospital or nursing home prior to the disaster.

In addition, we will recognize special circumstances for beneficiaries who, prior to the current disaster, had been recently discharged from an SNF after utilizing all of their available SNF benefit days. Existing Medicare regulations state that these beneficiaries cannot receive additional SNF benefits until they establish a new benefit period (i.e., by breaking the spell of illness by being discharged to a custodial care or non-institutional setting for at least 60 days). I find that covering SNF care without requiring a break in the spell of illness only for beneficiaries affected by Hurricane Sandy in the State of New Jersey would not increase total payments made under the Medicare program and would not change the essential acute-care nature of the Medicare SNF benefit. Therefore, we are also utilizing the authority under section 1812(f) of the Act to provide coverage for

extended care services which will not require a new spell of illness in order to renew provision of services by a SNF. Beneficiaries can then receive up to 100 days of SNF Part A coverage for care needed as a result of Hurricane Sandy in the State of New Jersey.

This policy will apply only for those beneficiaries who:

- were evacuated from a non-institutional setting in an emergency area (as specified in the waiver(s) issued under Section 1135 of the Act in connection with Hurricane Sandy in the State of New Jersey),
- need SNF care as a direct result of Hurricane Sandy in the State of New Jersey,
- were in the process of "breaking the spell of illness" for a prior SNF Part A stay, and would not normally be eligible for additional SNF Part A benefits.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-15
Baltimore, Maryland 21244-1850

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICARE

Center for Medicare

DATE: NOV - 2 2012

TO: Marilyn Tavenner
Acting Administrator

FROM: Jonathan D. Blum for Jon Blum
Acting Principal Deputy Administrator and
Director, Center for Medicare

SUBJECT: Authority for Beneficiaries Affected by Hurricane Sandy in the State of New Jersey effective October 26, 2012 to Receive Nursing Home Coverage (a) without a 3 day Hospitalization and (b) in the Absence of a Break in the Spell of Illness - **ACTION**

ISSUE

By law, Medicare generally only pays for care in a skilled nursing facility (SNF) when a beneficiary first has a hospital stay of at least 3 consecutive days and has established a new SNF benefit period requiring at least 60 consecutive days in a non-institutional or custodial level of care. We believe that it would be appropriate to provide temporary emergency coverage of SNF services that are not post-hospital SNF services under our authority in section 1812(f) of the Social Security Act (the Act), for those people who are evacuated, transferred, or otherwise dislocated as a result of the effect of Hurricane Sandy in the State of New Jersey effective October 26, 2012. This policy is necessary because we are aware that, in such a situation, it can often be impossible for providers to determine whether the 3-day stay requirement has been met.

In addition, we recommend recognizing special circumstances for those beneficiaries who, prior to the current disaster, had been recently discharged from an SNF after utilizing all of their available SNF benefit days. Existing Medicare regulations state that these beneficiaries cannot receive additional SNF benefits until they establish a new benefit period (i.e., by breaking the "spell of illness" by being discharged to a custodial care or non-institutional setting for at least 60 days). We recommend utilizing our authority under section 1812(f) of the Act to provide coverage for extended care services which will not require a new spell of illness in order to renew provision of services by a SNF. The beneficiary could then receive up to 100 days of SNF Part A coverage for care needed as a result of the current disaster.

These temporary emergency policies would apply to the geographic areas and timeframes specified in the waiver(s) issued under section 1135 of the Act in connection with the effect of Hurricane Sandy in the State of New Jersey. Accordingly, both the effective date and expiration date for these temporary emergency policies are the same as those specified pursuant to the section 1135 waiver. Further, unlike the policies authorized directly under the section 1135 waiver authority itself, the two policies described above would not be limited to beneficiaries who have been relocated within areas that have been designated as emergency areas. Instead, the policies would apply to all beneficiaries who were evacuated from an emergency area as a result of the effect of Hurricane Sandy in the State of New Jersey, regardless of where the "host" SNF providing post-disaster care is located.

DISCUSSION

Section 1861(i) of the Act permits Medicare payment for SNF care only when a beneficiary first has an inpatient hospital stay of at least 3 consecutive days. However, section 1812(f) of the Act allows for coverage of SNF care when the 3-day requirement is not met if we determine that such coverage will not increase total payments made under the Medicare program or change the essential acute-care nature of the SNF benefit. CMS believes that, because of the disruptions in hospital care resulting from the effect of Hurricane Sandy in the State of New Jersey, hospitals serving disaster areas may need to discharge less critically-ill beneficiaries to a SNF sooner than usual due to overcrowding. Not allowing this would unfairly disadvantage beneficiaries who, under normal circumstances, would qualify for Medicare coverage of their SNF care. There may also be cases in which skilled care is needed, and there is no available hospital bed due to the disaster. Again, applying the 3-day requirement could deny beneficiaries coverage to which they would have been entitled absent the disaster.

In addition, many beneficiaries who otherwise would have been able to end their spell of illness and renew their SNF benefits may have been prevented from doing so due to the dislocations resulting from the effect of Hurricane Sandy in the State of New Jersey. For example, beneficiaries who were evacuated from their homes may have experienced treatment delays in emergency shelters. As a result, their conditions deteriorated, and they were transferred from these emergency centers to nursing homes. Under existing policy, such beneficiaries would not be able to break their spells of illness and renew their SNF benefits.

RECOMMENDATION

I recommend you sign the attached statement of findings to support our decision to provide Medicare SNF coverage without a 3-day hospital stay requirement for beneficiaries affected by Hurricane Sandy in the State of New Jersey effective October 26, 2012, and also to allow such beneficiaries to renew their benefits without having to begin a new benefit period.

DECISION

Approved ✓ Disapproved _____ Date 11/2/12

Attachment:
Tab A – Statement for Acting Administrator's Signature