




Administrator

Washington, DC 20201

September 16, 2020

TO: The Secretary
Through: DS _____
COS _____
ES _____
FROM: Administrator 
Centers for Medicare & Medicaid Services

SUBJECT: Findings Concerning Section 1812(f) of the Social Security Act in Response to the Effects of the Oregon Wildfires in 2020

These findings are based on the public health emergency that you declared under Section 319 of the Public Health Service Act as a result of the consequences of the above-captioned emergency, and are effective with respect to the timeframes and geographic areas specified in the waiver(s) issued under section 1135 of the Social Security Act (the Act) in response to that emergency. Accordingly, both the effective date(s) and expiration date(s) for these temporary emergency policies are the same as those specified pursuant to the corresponding section 1135 waiver(s).

Section 1861(i) of 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 the above-captioned emergency (with respect to the timeframes and geographic areas specified in the waiver(s) issued under section 1135 of the Act as a result of that emergency) 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 who experience dislocations or are otherwise affected by the emergency, such as those who are (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) need SNF care as a result of the emergency, regardless of whether that individual was in a hospital or nursing home prior to the emergency.

In addition, we will recognize special circumstances for certain beneficiaries who have either begun or are ready to begin the process of ending their spell of illness 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). However, the disruptions arising from the emergency may delay or prevent such beneficiaries from commencing or completing the process of ending their current benefit period and renewing their SNF benefits that would have occurred under normal circumstances.

Accordingly, I find that covering additional SNF care without requiring a break in the spell of illness for those beneficiaries in connection with the above-captioned emergency 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 a one-time renewal of coverage for extended care services which will not first require starting a new spell of illness for such beneficiaries, who can then receive up to an additional 100 days of SNF Part A coverage as a result of the waiver.

Consistent with the above finding, this waiver does not apply to those cases where coverage restrictions would have had the effect of prolonging the current benefit period and precluding benefit renewal even under normal circumstances (such as a SNF resident's ongoing receipt of skilled care that is unrelated to the emergency); rather, it will include only those beneficiaries who have been delayed or prevented by the emergency itself from commencing or completing the process of ending their current benefit period and renewing their SNF benefits that would have otherwise occurred.