

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



**Center for Medicare Management**

---

**DATE:** MAR 27 2009

**TO:** Charlene Frizzera  
Acting Administrator

**FROM:** Jonathan D. Blum  
Director  
Center for Medicare Management

**SUBJECT:** Authority for Beneficiaries Affected by the Flooding in Minnesota in 2009 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 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 during the Spring of 2009 as a result of the flooding in Minnesota. 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 flooding in Minnesota, had been recently discharged from an SNF after utilizing some or 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

flooding in Minnesota in 2009. 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 flooding in Minnesota in 2009, 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 costs or change the essential acute-care nature of the SNF benefit. CMS believes that, because of the disruptions in hospital care resulting from the flooding in Minnesota in 2009, hospitals serving disaster areas may need to discharge less critically-ill beneficiaries to a SNF sooner than usual due to overcrowding. To not allow this would unfairly disadvantage beneficiaries who would, under normal circumstances, 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 have been prevented from doing so due to the dislocations resulting from the flooding in Minnesota in 2009. 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 the flooding in Minnesota in 2009, and also to allow such beneficiaries to renew their benefits without having to begin a new benefit period.

#### DECISION

Approved Cheryl Trizzano Disapproved \_\_\_\_\_ Date MAR 27 2009

Attachment:

Tab A -- Statement for Acting Administrator's Signature