



Administrator
Washington, DC 20201

DATE: MAR 25 2009

TO: The Acting Secretary
Through: DS _____
COS _____
ES _____

FROM: 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 costs 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 during the Spring of 2009 by the flooding in North Dakota (with respect to the geographic areas and timeframes specified in the waiver(s) issued under section 1135 of the Act as a result of the flooding in North Dakota) would not increase costs to 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 flooding in North Dakota, 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). I find that covering SNF care without requiring a break in the spell of illness only for beneficiaries affected during the Spring of 2009 by the flooding in North Dakota would not increase costs to 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 the flooding in North Dakota. 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 the flooding in North Dakota in 2009),
- need SNF care as a direct result of the flooding in North Dakota in 2009,
- 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.



Charlene Frizzera
Acting Administrator