

Improvement Standard and Jimmo News

Skilled Maintenance Services Are Covered by Medicare.

CMS has issued a [Fact Sheet](#) outlining the *Jimmo v. Sebelius* settlement. Use this fact sheet now as evidence that skilled maintenance services are coverable for skilled nursing facility care, outpatient therapy, and home health care. The Center for Medicare Advocacy has [Self-help Packets](#) to help pursue Medicare coverage, including for skilled maintenance nursing and therapy.

The *Jimmo*

settlement was approved on January 24, 2013 after a fairness hearing, marking a critical step forward for thousands of beneficiaries nationwide. (See the [Order Granting Final Approval](#)). The lawsuit was brought on behalf of a nationwide class of Medicare beneficiaries by six individual beneficiaries and seven national organizations representing people with chronic conditions, to challenge the use of the illegal Improvement Standard.

The proposed Jimmo settlement agreement^[2] was originally filed in federal District Court on October 16, 2012. The plaintiffs joined with the named defendant, Secretary of Health and Human Services Kathleen Sebelius, in asking the federal judge to approve the settlement of the case. With only one written comment received, and no class members appearing at the fairness hearing to question the settlement, Chief Judge Christina Reiss granted the motion to approve the Settlement Agreement on the record, while retaining jurisdiction to enforce the agreement in the future, as requested by the parties.

With the settlement now officially approved, the Centers for Medicare & Medicaid Services (CMS) is tasked with revising its Medicare Benefit Policy Manual and numerous other policies, guidelines and instructions to ensure that Medicare coverage is available for skilled maintenance services in the home health, nursing home and outpatient settings. CMS must also develop and implement a nationwide education campaign for all who make Medicare determinations to ensure that beneficiaries with chronic conditions are not denied coverage for critical services because their underlying conditions will not improve.

It is important to note that the Settlement Agreement standards for Medicare coverage of skilled maintenance services apply now – while CMS works on policy revisions and its education campaign. The Center is hearing from beneficiaries who are still being denied Medicare coverage based on an Improvement Standard, but coverage should be available now for people who need skilled maintenance care and meet any other qualifying Medicare criteria. This is the law of the land – agreed to by the federal government and approved by the federal judge. We encourage people to appeal should they be denied Medicare for skilled maintenance nursing or therapy because they are not improving.

Patients should discuss with their health care providers the Medicare maintenance standard and whether it is applicable to them. Health care providers should apply the maintenance standard and provide medically necessary nursing services or therapy services, or both, to patients who need them to maintain their function, or prevent or slow their decline. Under the maintenance standard articulated in the settlement, **the important issue is whether the skilled services of a health care professional are needed, not whether the Medicare beneficiary will "improve."**

For answers to many common questions about the Settlement, see our [Frequently Asked Questions](#).

What Can Beneficiaries Do If They Were Denied Care Under the Improvement Standard?

The *Jimmo* settlement also establishes a process of "re-review" for Medicare beneficiaries who received a denial of skilled nursing facility care, home health care, or out-patient therapy services (physical therapy, occupational therapy, or speech therapy) that became final and non-appealable after January 18, 2011 because of the Improvement Standard. Shortly after the federal district court approves the settlement, CMS will announce how beneficiaries can invoke the re-review process. As more information becomes available, the Center for Medicare Advocacy will post information on its website.

For people needing assistance with appeals, the Center for Medicare Advocacy has [self-help materials](#) available. This information can help individuals understand proper coverage rules and learn how to contest Medicare denials for outpatient, home health, or skilled nursing facility care.

Why the *Jimmo* Case Matters:

More Background on the *Jimmo* Case:

- [Timeline of the Improvement Standard](#)
- [Jimmo, et al vs. Sebelius](#)
- [Jimmo Case Summary](#)
- [CMS.gov Jimmo Search result](#);
- [CMS Cover Letter](#) to Medicare Advantage Organizations, Medicare Advantage-Prescription Drug, Section 1876 Cost Organizations, and PACE Plans.
- [View a highlighted copy of the Settlement Agreement](#) (or [Print the Settlement Agreement](#))
- [Notice of Proposed Settlement and of Fairness Hearing](#)
- [View the Order Preliminarily Approving the Agreement](#)
- Read the [Amended Complaint](#), filed 03/03/2011.
- Read the Center for Medicare Advocacy's [press release](#) announcing the lawsuit.
- Learn more about [media coverage on this issue](#).
- Listen to [the audio news conference announcing the lawsuit](#) (streaming audio).
- [Recorded Webinar](#) available now

Articles and Updates

- [Coverage for People with Chronic Conditions](#)

For older articles, please see [our archive](#).

The case filing of the class action lawsuit received extensive coverage in the media, including articles by the *Associated Press*, *Chicago Tribune*, *Detroit Free Press* and *The Hill*. A [more complete list media coverage](#) is available as well.

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[1] *Jimmo v. Sebelius*, No. 11-cv-17 (D.Vt.), filed January 18, 2011.

[2] The proposed settlement is at www.medicareadvocacy.org/wp-content/uploads/2012/12/Jimmo-Settlement-Agreement-00011764.pdf

[3] [http://www.nytimes.com/2012/10/24/opinion/a-humane-medicare-rule-change.html?](http://www.nytimes.com/2012/10/24/opinion/a-humane-medicare-rule-change.html?partner=rssnyt&emc=rss)

[partner=rssnyt&emc=rss](http://www.nytimes.com/2012/10/24/opinion/a-humane-medicare-rule-change.html?partner=rssnyt&emc=rss). See also Robert Pear, "Accord to Ease Medicare Rules in Chronic Cases; Longtime Policy Ends," *The New York Times*, page 1 (Oct. 23,

2012), <http://www.nytimes.com/2012/10/23/us/politics/settlement-eases-rules-for-some-medicare-patients.html>.