

## **CMS Issues Waivers for Three Day Qualifying Hospital Stay and Spell of Illness**

On Friday March 13, 2020 the Secretary of the Department of Health and Human Services authorized waivers of both the Skilled Nursing Facility 3 day qualifying stay and the new spell of illness requirement under the Section 1135 of the Social Security Act retroactive to March 1, 2020. The waiver is available as a result of the national emergency declared by President Trump on March 13, 2020 and further approved by the Secretary on March 14, 2020. The waiver is broad based and applies to ALL Skilled Nursing Facilities regardless of whether there is a COVID 19 outbreak in the discharging hospital. With the Secretary issuing a broad based “blanket” waiver this eliminates the requirement for a SNF to obtain a provider specific waiver. Essentially, all skilled nursing facilities are included in the waiver.

Both waivers are intended to keep acute care hospital beds open and available as COVID 19 cases increase nationwide.

### **Waiver to the 3-day Qualifying Stay**

Medicare Beneficiaries who are affected by this emergency will be able to use their Medicare Part A SNF benefits without having a 3-day qualifying hospital stay. Circumstances where this waiver may apply:

- Beneficiary may be discharged from a hospital early and without three consecutive inpatient days
- A Beneficiary may be admitted directly from home and skip the hospital stay entirely
- A Beneficiary may be admitted directly from the hospital ER without three consecutive inpatient days
- A current SNF patient who has days available in their spell of illness may “skill in place” without the need for a three hospital stay

What we learned from Hurricane Katrina; we believe that while the overall intent is to free up hospital beds for COVID 19 patients, the SNF should document the specific conditions prompting each specific admission and how that admission frees up hospital space for COVID 19 patients in compliance with the waiver.

As discussed below, is it imperative to document the need for skilled care under standard Medicare guidelines.

### **Waiver of Spell of Illness**

This waiver applies to beneficiaries who had expended, or are ready to begin the process of ending their spell of illness after utilizing all their available SNF days. The dislocations resulting from the emergency (including emergency-related measures that could result in discharge delays) 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.

Therefore, CMS is also utilizing the authority under section 1812(f) of the Act to provide renewed coverage for extended care services without requiring beneficiaries to have had a new spell of illness. Such beneficiaries can then receive up to an additional 100 days of SNF Part A coverage for care needed as a result of the above-captioned emergency. Again, the need for continuing skilled services must be

established and documented. It is not clear at this time whether more than one extension will be permitted if the emergency continues into the summer.

Medicare Beneficiaries who recently discharged from a SNF, beneficiaries in a SNF but who are not receiving a skilled level of care, and have not had a 60 consecutive days break without receiving skilled care will now be eligible for a new benefit period without waiting. They will be eligible for an additional 100 days under this waiver. Again, the need for continuing skilled services must be established and documented.

- Medicare Beneficiaries who exhausted their 100 days but did not discharge from a SNF and are only receiving custodial care but have not gone 60 consecutive days without receiving skilled care and therefore are not eligible for a new benefit period would be granted an additional 100 days under this waiver.

This extension of coverage does not apply to a beneficiary who previously exhausted their 100 day benefit, is still residing in a SNF and still receiving skilled care.

### **Medicare Skilled Coverage**

The critical issue in waiving the three day hospital stay requirement and/or the Spell of Illness Requirement is that the patient must still meet the requirement of skilled care found at Medicare Benefit Policy Manual Chapter 8 Section 30. Essentially, this means that the beneficiary **requires the skills of licensed professional on daily basis.**

*Care in a SNF may be covered if all of the following four factors are met:*

- *The patient requires skilled nursing services or skilled rehabilitation services, i.e., services that must be performed by or under the supervision of professional or technical personnel (see §§30.2 - 30.4); are ordered by a physician and the services are rendered for a condition for which the patient received inpatient hospital services or for a condition that arose while receiving care in a SNF for a condition for which he received inpatient hospital services;*
- *The patient requires these skilled services on a daily basis (see §30.6); and*
- *As a practical matter, considering economy and efficiency, the daily skilled services can be provided only on an inpatient basis in a SNF. (See §30.7.)*
- *The services delivered are reasonable and necessary for the treatment of a patient's illness or injury, i.e., are consistent with the nature and severity of the individual's illness or injury, the individual's particular medical needs, and accepted standards of medical practice. The services must also be reasonable in terms of duration and quantity.*

These medical necessity criteria are not waived. Therefore it is critically important that clinical documentation support the need for skilled care on a daily basis.

### **Completing the UB-04**

Medicare claims for beneficiaries must have the condition code "DR" (disaster related). This code will allow the claim to bypass the 3-day QHS requirement. Occurrence span code "70" does not need to be reported on these claims. It is also recommended to include the remark "Declared Emergency/Disaster" on the remarks page.