



LAWSUIT CHALLENGES RIGID INTERPRETATION OF “INPATIENT” FOR A HOSPITAL QUALIFYING STAY

On November 23, 2004, two Medicare beneficiaries filed a lawsuit in a Connecticut federal court seeking to change a policy of the Centers for Medicare and Medicaid Services (CMS) that makes it more difficult for Medicare beneficiaries to obtain coverage of care in skilled nursing facilities (SNF). The two beneficiaries, both of whom are Connecticut residents, seek to represent a nationwide class of individuals who spend a day or two in an emergency room or on “observation status” before being admitted formally as an inpatient and then transferring to a SNF. Under CMS’ policy, time in the emergency room or in observation status is not counted towards the three days in a hospital that is a condition for coverage of subsequent nursing home care. Only time spent as a formal inpatient is counted.

Marion Landers was 96 years old when she was taken to an emergency room, where she spent one day before her formal admission as an inpatient. Her treatment and care in the emergency room were essentially the same as that received as an inpatient. After two days as an inpatient, she was transferred to a SNF, but the Secretary of Health and Human Services determined at each level of administrative review that Medicare would not cover her SNF care because she had not had a three-day qualifying stay in the hospital.

Similarly, last winter Marion Dixon, at age 75, went first to the emergency room and then to a bed in the hospital for “observation.” When he was formally admitted after two days, he stayed in the same bed and received the same care that he had been receiving. Upon transfer to a SNF after three days in the hospital, however, his nursing home care was not covered by Medicare because the two days in the emergency room and on “observation status” were not counted.

One of the ironies of CMS’ approach to this situation is that some services provided prior to the date of formal admission are treated as inpatient services for purposes of coverage of *hospital* care. But, for purposes of qualifying for SNF coverage, only time spent as a formal inpatient is counted. This difference in treatment occurs despite the fact that the statutes authorizing hospital coverage and SNF coverage both use the term “inpatient.” See 42 U.S.C. § 1395d(a)(1) (hospital coverage for “inpatient hospital services”); 42 U.S.C. § 1395x(i) (SNF care for a former “inpatient”).

It is thus clear that the term inpatient does not invariably have the strict meaning ascribed to it in the SNF coverage context. Rather, a common sense approach, which recognizes that someone ultimately admitted as an inpatient receives essentially the same care throughout her stay, should be applied. Indeed, one federal judge did so hold in a decision ten years ago involving an individual Medicare beneficiary. *Jenkel v. Shalala*, 845 F.Supp. 69 (D.Conn. 1994). The plaintiffs in the new lawsuit (formally designated *Landers v. Thompson*, No. 3:04CV1988 JCH (D.Conn.)) hope to achieve the same result not just for themselves but for Medicare beneficiaries across the country who are confronted with this problem.

If advocates have clients in this situation who might want to participate in the litigation as named plaintiffs, or for more information regarding this case and issue, contact attorney Gill Deford in the Center for Medicare Advocacy’s Connecticut office at (860) 456-7790, or gdeford@medicareadvocacy.org.