

Three-Day QHS & Extended Benefit Period Waiver Considerations

Thoughtware Alert

Mar 25, 2020

Authors : [Sherri Robbins](#)

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CMS has waived the Social Security Act's Section 1812(f) requirement for a three-day hospitalization for Medicare Part A coverage of a skilled nursing facility (SNF) stay. This allows for temporary emergency coverage of SNF services without a qualifying hospital stay for those beneficiaries who need skilled care as a result of a disaster or emergency's effect—namely COVID-19. In addition, for certain beneficiaries who recently exhausted their SNF benefits, it authorizes renewed SNF coverage without having a 60-day wellness period.

Our advice moving into these uncharted times is that providers understand what CMS is trying to accomplish when implementing the waiver (by ensuring hospital beds are available and seniors are protected from the virus) and have processes in place to support medical necessity of skilled care through proper

documentation. The CMS waiver was posted on March 13, 2020, and indicated the effective date as March 1, 2020. Without proper decisions or lack of supporting documentation it could be possible for program contractors and others responsible for program integrity to deny claims, or even to allege fraud and abuse, in some situations. It also would be expected that after the emergency is declared over, the government—either through its contractors or the Office of Inspector General (OIG)—would engage in data mining to compare Medicare claims filed before and after March 1, 2020. We want to offer some practical guidance for providers when using the waivers provided by CMS.

At this point, providers need clarifications to avail themselves and their patients of the benefits of the waiver, but also need to be cautious to balance risk. Available authoritative guidance is limited; however, based on the information available as of the date of this article, we offer the following examples regarding the waivers for your consideration.

If a referring hospital has valid reasons for either not admitting or shortening an acute stay that's related to the COVID-19 emergency, it should have documentation or a statement to verify its reasons—for example, not wanting to expose a patient to the infection or a need to keep acute beds available for more seriously ill patients.

Example: A resident has exhausted benefits and been off Med A for 45 days. The resident is now very ill with an infection, but the physician doesn't want to hospitalize the patient due to 1) a lack of acute beds, 2) wanting to reserve beds needed for more seriously ill patients and/or 3) not wanting to expose the resident to an infection or virus in the hospital. The physician plans to treat in place (in the SNF) with IV antibiotics, which qualifies for skilled care, thus applying the new benefit period without the 60-day period of wellness. The facility should document both the reason for waiving the three-day qualifying stay and the need for skilled care.

Example: A resident has exhausted benefits and falls and fractures a hip. The resident is transferred to the hospital for surgery but is only admitted for one night. The hospital documents that the patient will be returned to the SNF for rehabilitation due to the need for acute beds and/or fear of exposure to a virus. The resident is sent back to facility, and the three-day stay is waived and the benefit period is extended for skilled nursing and therapy.

Example: A resident was admitted to the SNF following a two-midnight hospital stay for an illness or injury on March 2, 2020. The patient was not skilled due to lack of a qualifying hospital stay. On March 13, 2020, CMS posted the waiver. The provider spoke with the physician on March 16, 2020, and requested orders for skilled care since the patient required skilled rehab services to return to their prior level of function and discharge back to home. The physician provided the necessary orders and signed the physician certification effective for March 16, 2020. Using the 30-day transfer rule and the CMS waiver, the patient can now use their Medicare Part A benefits. It would not be feasible to have the Medicare admission date of March 2, 2020, even though the waiver went into effect on March 1, 2020, because the provider had not yet been notified of the waiver and the necessary supporting documentation was not in place.

Example: A SNF has a current nonskilled patient who develops pneumonia. The physician decides to treat in place at the SNF versus sending to the hospital because the hospital has COVID-19 cases and the acute beds are needed to serve those who currently don't have the ability to be treated elsewhere. The SNF is capable of administering the IV medications and IV fluids to the patient to treat the pneumonia. The physician documentation should include their reason(s), and the nursing admission assessment (to skilled) should do the same.

The above examples only apply to Medicare Part A fee-for-service and not Medicare Advantage or replacement products.

A best practice would be that all providers, physicians and the nursing admission assessment include documentation regarding the emergency waiver and how it's in the best interest of the patient to treat in place at the SNF in addition to the need for skilled services. In cases where the Medicare benefit period will be extended, documentation to support the continued skilled care would be critical. This is an evolving situation and this article reflects our interpretation and advice as of March 24, 2020.

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