

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
One Ashburton Place, Room 1109
Boston, Massachusetts 02108

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

JOHN W. POLANOWICZ
Secretary

Tel: (617) 573-1600
Fax: (617) 573-1891
www.mass.gov/eohhs

July 23, 2013

Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W., Room 314G
Washington, D.C. 20201

Dear Ms. Tavenner:

On behalf of the Commonwealth of Massachusetts, I am writing to request a waiver or other exemption from the rule that reimbursement of Medicare fee-for-service (FFS) post-hospital extended care services in a skilled nursing facility (SNF) is not available unless the admission follows a prior hospital inpatient stay lasting at least three consecutive days (42 U.S.C. § 1395x(i)) (the "Three Day Rule").

I am making this request pursuant to Section 245 of Chapter 224 of the Acts of 2012, which requires the Executive Office of Health and Human Services to seek such a waiver or other exemption. In making this request, I recognize that the Secretary of Health and Human Services has flexibility to develop and engage in demonstration projects to improve efficiency and economy while maintaining quality in the provision of health services, and I hope to work with you and your staff to identify and develop appropriate mechanisms for implementing such a waiver.

In developing this request, the Commonwealth has sought the input of a number of stakeholders, including providers (hospitals, skilled nursing facilities, physicians and other care providers, home care agencies, and Pioneer Accountable Care Organizations), health plans and Senior Care Organizations, and consumer representatives. Through the discussions, the Commonwealth has heard from stakeholders about potential benefits of such a waiver or exemption, including the following:



- A waiver would allow patients to avoid unnecessary hospitalization and to obtain the appropriate level of care.

Currently, patients who present with a complaint that requires care in a skilled nursing facility must first stay (and meet inpatient level of care) for three nights in an acute hospital prior to transfer. Keeping a patient in an acute inpatient setting when the patient could potentially be cared for in a skilled nursing facility may expose patients to unnecessary risks of hospitalization and may create unnecessary delay for patients to get the rehabilitation care that they need.

- A waiver has the potential to reduce costs to the federal government, as care in a nursing facility is less expensive than care in an acute inpatient hospital.

If a patient has a diagnosis that requires on-going care in a skilled nursing facility, requiring that patient to continue to be cared for in an inpatient acute hospital setting is not efficient from a cost perspective. Care provided in a hospital is more expensive than care provided in a skilled nursing facility: the median daily cost of a skilled nursing facility is roughly \$326¹, compared to expenses per inpatient day of \$2,419 in a hospital.²

Taken together, the goal of waiving the Three Day Rule is to ensure that all beneficiaries are able to be cared for in the most appropriate setting and to receive the right care, in the right place, at the right time.

Many entities in our state already have experience with caring for Medicare patients without the constraints of the Three Day Rule. These include Senior Care Organizations, PACE providers, Medicare Advantage Plans and the Massachusetts General Hospital (MGH) Care Management Program. We have conferred with representatives from these organization types in developing this proposal, and recognize the important expertise that providers and payers in our state already have in caring for patients without a three-day rule in place. The MGH Care Management Program, for example, has included extensive operational data collection as part of CMS' Care Management for High Cost Beneficiaries demonstration, and has been able to show that patients can be appropriately triaged directly to skilled nursing care, as evidenced by low hospital rates after direct skilled nursing admission.

We propose a demonstration that would include the following elements:

1. The demonstration would involve Medicare FFS patients and would last for three to five years.
2. Inpatient providers, outpatient providers, home care agencies, acute hospitals and post-acute care facilities would voluntarily choose to participate in the demonstration. We would be happy to work with you to define a plan for selection and oversight of such providers. We

¹ 2012 Genworth Cost of Care Survey. <http://www.skillednursingfacilities.org/articles/nursing-home-costs.php>

² Kaiser State Health Facts. <http://www.statehealthfacts.org/profileind.jsp?cat=5&sub=68&rqn=23>

recognize that Pioneer ACOs are among the organizations with a high degree of interest in participating in such a program.

3. Participating providers would be reimbursed for skilled nursing facility stays, even if they were not preceded by a three-day inpatient hospital stay, if the participating providers adhered to guidelines developed as part of the demonstration. We anticipate that guidelines would encompass the following areas:

a. **Clinical criteria for patients who are appropriate for treatment in a skilled nursing facility without a preceding three-day hospital stay** - We propose consideration of the following criteria for identifying patients appropriate for treatment in a skilled nursing facility without a preceding three-day hospital stay:

- The treating provider determines that the patient is medically stable and can be appropriately treated in a skilled nursing facility;
- The treating provider determines that the patient does not require further hospital-based evaluation and treatment; and
- The treating provider determines that patient has a defined skilled or rehab need.

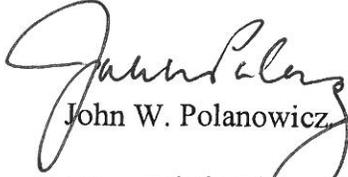
b. **Communication standards between providers (outpatient, acute inpatient, skilled nursing facility)** - The transfer of patients should take place in the context of appropriate communication between care teams at the transferring and receiving facilities, the patient and his/her family, and the patient's providers or case managers in outpatient settings. Communication should include discussion/agreement about the transfer, regular updates about the patient's process, and discharge communication between providers at each step in the process. It should involve the patient's case manager(s) and community-based organizations that represent elders and individuals with disabilities as appropriate.

c. **Evaluation and monitoring activities** - In order to ensure that the demonstration meets its goals for efficiency and for quality of care, all participants should be required to report data needed for evaluation and monitoring activities. These activities should include reporting of the number of patients admitted without a preceding stay, and for these patients, the length of stay, and the hospitalization/re-hospitalization rate. In addition, the overall utilization rate for the skilled nursing facility benefit and the inpatient hospital days should be followed. Reporting requirements should also include data on the patient's experience.

I recognize that additional details of any waiver or exemption would need to be developed in partnership with CMS. I would be pleased to have my staff engage with your staff to discuss the conditions necessary for such a waiver or demonstration to take place, and how this waiver or demonstration might relate to existing innovations in care delivery, including the Care Management demonstration and Accountable Care Organization models. I look forward to

working with you on this important topic. Please do not hesitate to contact me if I can provide any additional information that would assist your review of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Polanowicz". The signature is fluid and cursive, with the first name "John" being particularly prominent.

John W. Polanowicz

cc: Kristin Thorn, Acting Medicaid Director