



June 18, 2015

The Honorable Johnny Isakson
United States Senate
131 Russell Senate Office Building
Washington, DC 20510

The Honorable Mark Warner
United States Senate
475 Russell Senate Office Building
Washington, DC 20510

Subject: Chronic Care Working Group

Dear Senator Isakson and Senator Warner:

The National Academy of Elder Law Attorneys (NAELA) thanks you for the opportunity to provide input to the Senate Finance Committee working group on improving outcomes for Medicare patients who require chronic care.

NAELA is a national, non-profit association comprised of 4,500 attorneys who concentrate on legal issues affecting seniors, people with disabilities, and their families. The mission of NAELA is to establish NAELA members as the premier providers of legal advocacy, guidance, and services to enhance the lives of people with special needs and people as they age.

Seniors and persons with disabilities often seek out a NAELA attorney due to a chronic illness that requires extensive health and long-term care. Many express deep worry for how they will pay for this care and whether they can receive care in their homes.

Many individuals with chronic conditions ultimately lose the ability to care for themselves in ways often taken for granted, such as going to the bathroom, getting dressed, and eating. The costs to provide assistance with these “activities of daily living” are not covered by Medicare and can quickly lead to impoverishment. Medicaid will cover these costs, but only when a person becomes destitute.

Thus, when considering improvements to Medicare for persons with chronic conditions, NAELA suggests taking a holistic approach that examines the functional decline of persons with chronic conditions over time and how that impacts not just Medicare, but also Medicaid, state budgets, and personal finances. Today’s Medicare beneficiaries with chronic illnesses are likely to become Medicaid’s beneficiaries for long-term services and support, if they are not already dual-eligible.

Expand Medicare Home Health Coverage for Persons with Chronic Illnesses

While only 9.5 percent of Medicare beneficiaries receive home health services, 86 percent of these beneficiaries have three chronic conditions or more. Under current federal law, a Medicare beneficiary that is homebound must be in need of either skilled nursing care on an intermittent basis, physical therapy, speech-language pathology, or have a continuing need for occupational therapy in order to qualify for the Medicare home health benefit.

Congress should expand the home health benefit under Medicare Part A and Part B to allow coverage for individuals with chronic illness who are in need of health related services above the level of room and board. (See Appendix for draft changes.)

Due to the functional limitations of individuals with chronic illness, expanded home health coverage would provide Medicare beneficiaries with preventive care that would avoid costlier visits to a hospital or a skilled nursing facility. In addition, this preventive care could help some individuals avoid destitution due to the high cost of long-term services and supports. Once impoverished, seniors and persons with disabilities who require these services and supports will ultimately be forced to rely on Medicaid, which still remains biased towards institutional care, forcing many to leave their homes prematurely.

Section 7702B of the Internal Revenue Code (26 U.S.C. § 7702B(c)(2)) defines a “chronically ill individual” for purposes of determining eligibility for income tax deductions for medical expenses. These medical expenses can include “qualified long-term services” and tax qualified long-term care insurance policies. A similar definition could be used in the Social Security Act to define chronically ill individuals that would qualify for home health coverage. Section 7702B of the IRC defines a “chronically ill individual” as:

“any individual who has been certified by a licensed health care practitioner as—

- (i) being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity,
- (ii) having a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described in clause (i), or
- (iii) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless within the preceding 12-month period a licensed health care practitioner has certified that such individual meets such requirements.”

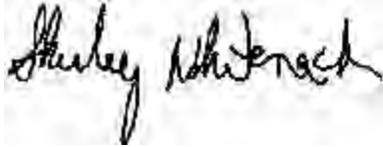
Section 7702B lists activities of daily living as eating, toileting, transferring, bathing, dressing, and continence.

NAELA Applauds Efforts to Extend the Independence at Home Demonstration

Congress has previously recognized the importance of providing health services in the home to Medicare beneficiaries with chronic conditions. The Independence at Home Demonstration currently underway is testing a service delivery and payment incentive model using primary care in the home to improve the health of Medicare beneficiaries living with multiple chronic conditions. NAELA supports these efforts and applauds the bipartisan push in the Senate and House to extend this demonstration program another two years.

Thank you for the opportunity to provide our input on this important undertaking. If you have any questions, please contact David Goldfarb, NAELA's Public Policy Manager, at dgoldfarb@naela.org.

Sincerely,

A handwritten signature in black ink that reads "Shirley Whitenack". The signature is written in a cursive style and is centered on the page.

Shirley Whitenack, Esq., CAP
NAELA President

Appendix: Proposed Changes to Statute

Medicare Part A: 42 U.S.C. § 1395f(a)(2)(C)

(C) in the case of home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this title) and **is a chronically ill individual in need of health related services above the level of room and board (see 26 U.S.C. § 7702B(c)(2))** or needs or needed skilled nursing care (other than solely venipuncture for the purpose of obtaining a blood sample) on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; such services are or were furnished while the individual was under the care of a physician, and, in the case of a certification made by a physician after January 1, 2010, prior to making such certification the physician must document that the physician himself or herself, or a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) who is working in collaboration with the physician in accordance with State law, or a certified nurse-midwife (as defined in section 1395x(gg) of this title) as authorized by State law, or a physician assistant (as defined in section 1395x(aa)(5) of this title) under the supervision of the physician, has had a face-to-face encounter (including through use of telehealth, subject to the requirements in section 1395m(m) of this title, and other than with respect to encounters that are incident to services involved) with the individual within a reasonable timeframe as determined by the Secretary

Medicare Part B: 42 U.S.C.A. § 1395n(a)(2)(A)

(A) in the case of home health services (i) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this title) and **is a chronically ill individual in need of health related services above the level of room and board (see 26 U.S.C. § 7702B(c)(2))** or needs or needed skilled nursing care (other than solely venipuncture for the purpose of obtaining a blood sample) on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, (iii) such services are or were furnished while the individual is or was under the care of a physician, and (iv) in the case of a certification after January 1, 2010, prior to making such certification the physician must document that the physician, or a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) who is working in collaboration with the physician in accordance with State law, or a certified nurse-midwife (as defined in section 1395x(gg) of this title) as authorized by State law, or a physician assistant (as defined in section 1395x(aa)(5) of this title) under the supervision of the physician, has had a face-to-face encounter (including through use of telehealth and other than with respect to encounters that are incident to services involved) with the individual during the 6-month period preceding such certification, or other reasonable timeframe as determined by the Secretary,