# JIM'S STORY

- Age 81, hospitalized for pneumonia secondary to COVID-19.
- Health history of COPD and undergoing chemotherapy for B-cell lymphoma.
- Prior to hospitalization, was independent in all activities of daily living and did not require supplemental oxygen.
- Doctors recommended 30 days in Skilled Nursing Facility for rehab
- Predictive technology used by insurance said he would only need 14.2-17.8 days
- Denial issued on day 16 with payment ending on day 18
- Jim's treating doctors and therapists did not agree with the predicted date
- Jim feared mounting out-of-pocket costs, so returned home on day 25 against medical advice

JIM'S STORY

- AI directed Jim's care
- Jim's doctors and therapists could not override the algorithm's predicted date

PREDICTIVE TECHNOLOGY
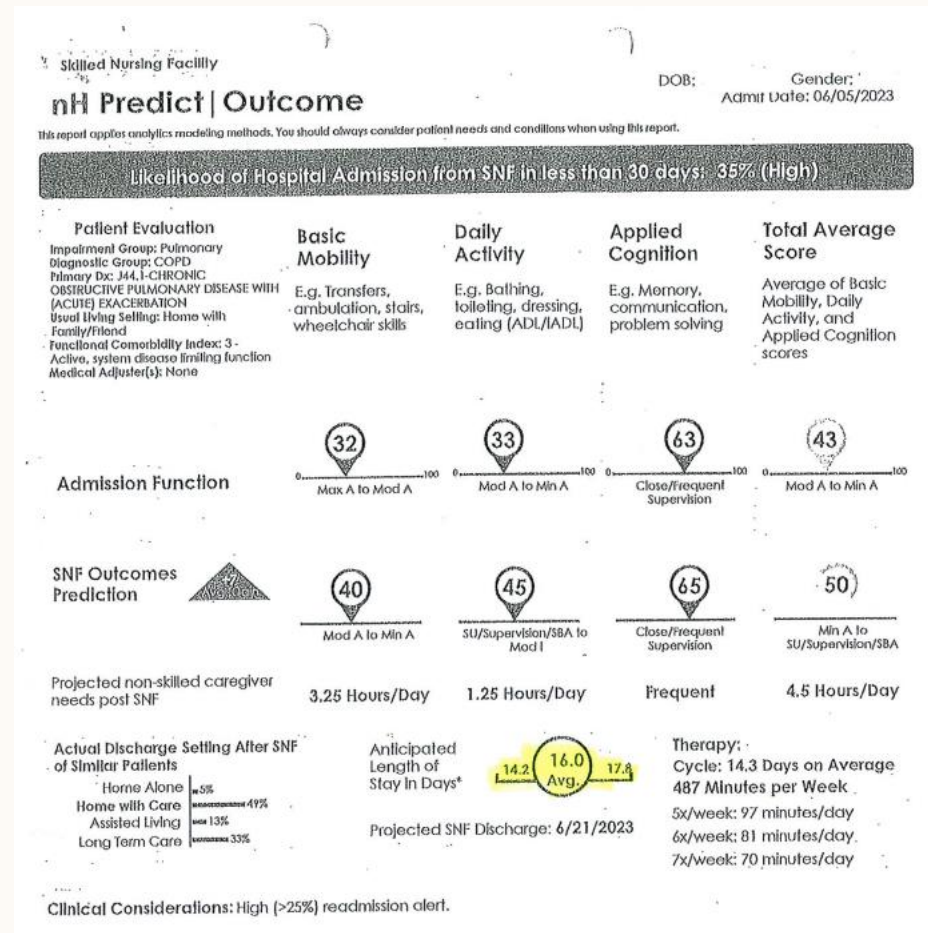
WHAT AI MISSED

- Unable to safely swallow on his own, and had a choking episode days into his stay
- Oxygen saturation was at unsafe levels
- He was a fall risk
- Lacked the strength and activity tolerance to participate in chemotherapy
- Could not climb the three stairs into his home
- Required assistance from 1-2 people for all activities of daily living
- The direct words in his medical record: "Currently not safe to return home with wife."

APPEALS PROCESS

- <u>Patient</u> must appeal to fight the predicted discharge date
  - Phone calls
  - Written appeals
  - Medical record gathering
  - Administrative hearings
- 1% of denials are appealed, of those, 75% are overturned
- 30.8 million Americans on Medicare Advantage Plans, most of which use this predictive technology

RIPPLE EFFECT

PATIENT HARM

- Financial ($300+ per day)
- Health and Safety
- Hospital Re-admission

ADMINISTRATIVE BURDENS

- Daily updates to subcontractors
- Low performance scores if keep patients longer than predicted discharge date
- Penalties for hospital re-admissions

ECONOMIC EFFECTS

- Family members leaving the workforce to provide care
- Forced Medicaid shifts costs to the states

LOOKING FORWARD

CMS Final Rule

- MA Plans cannot deny coverage based on internal, proprietary, or external clinical criteria that are not found in Traditional Medicare coverage policies.
- Use of such tools and their proprietary nature does not absolve MA Plans from their responsibilities under this final rule.
- For an MA Plan to use the coverage criteria in these tools, the plan will need to understand the external clinical evidence relied upon in these products and how that evidence supports the coverage criteria applied by these tools.
- The MA Plan must make the evidence that supports the internal criteria used by (or used in developing) these tools publicly available, along with the internal coverage policies themselves.
- MA organizations must provide information and access to CMS (and HHS and the OIG) as it conducts its oversight of MA plans and their compliance with MA program requirements.
- We expect MA plans already using these tools, or those that may plan to use these tools in the future, to work with third parties that provide these tools to revise any utilization management products and ensure that these products meet the requirements at § 422.101(b), (c), and § 422.566(d).

https://www.federalregister.gov/documents/2023/04/12/2023-07115/medicare-program-contract-year-2024-policy-and-technical-changes-to-the-medicare-advantage-program

LOOKING FORWARD

Biden Executive Order

Sec. 8 . *Protecting Consumers, Patients, Passengers, and Students.*

(b) To help ensure the safe, responsible deployment and use of AI in the healthcare, public-health, and human-services sectors:

(i) Within 90 days of the date of this order, the Secretary of HHS shall, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, establish an HHS AI Task Force that shall, within 365 days of its creation, develop a strategic plan that includes policies and frameworks—possibly including regulatory action, as appropriate—on responsible deployment and use of AI and AI-enabled technologies in the health and human services sector (including research and discovery, drug and device safety, healthcare delivery and financing, and public health), and identify appropriate guidance and resources to promote that deployment, including in the following areas:

(A) development, maintenance, and use of predictive and generative AI-enabled technologies in healthcare delivery and financing—including quality measurement, performance improvement, program integrity, benefits administration, and patient experience—taking into account considerations such as appropriate human oversight of the application of AI-generated output;

https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence

RESOURCES

Kaiser Health News

- https://kffhealthnews.org/news/article/biden-administration-software-algorithms-medicare-advantage/
- https://kffhealthnews.org/news/article/nursing-home-surprise-medicare-advantage-plans-shorten-stays/

US Senate Hearings

- https://www.hsgac.senate.gov/subcommittees/investigations/hearings/examining-health-care-denials-and-delays-in-medicare-advantage/
- https://www.help.senate.gov/hearings/avoiding-a-cautionary-tale-policy-considerations-for-artificial-intelligence-in-health-care

STAT News

- https://www.statnews.com/2023/03/13/medicare-advantage-plans-denial-artificial-intelligence/
- https://www.statnews.com/2023/05/17/senate-investigation-medicare-advantage-algorithms-denials/
- https://www.statnews.com/2023/07/11/medicare-advantage-algorithm-navihealth-unitedhealth-insurance-coverage/
- https://www.statnews.com/2023/11/14/unitedhealth-algorithm-medicare-advantage-investigation/

THANK YOU

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