

Background Information on Observation Stays:

In this new era of health reform, the lines between policy and patient care are blurred. Hospitals – trying to avoid stiff penalties – are caring for the frail elderly but compromising their post-hospital benefits by increasingly leaving in the no mans land of observation stays.

When an older loved one experiences a medical crisis that involves the need for hospital care, how that individual is characterized in the hospital system is usually the furthest thing from a family member's mind. However, this crucial piece of information can be the determining factor regarding the care and follow up care a patient is eligible to receive as well as coverage for certain hospital expenses.

In many instances, a patient will need medical stabilization and rehabilitation care at a skilled nursing facility (SNF) following their discharge from a hospital, which can only be accessed if the patient was admitted to a hospital as an inpatient for at least three days. In order to avoid stiff penalties due to misdiagnosis or uncertain prognosis, hospitals are opting instead to keep patients in a sort of "limbo" without any clear classification.

If a Medicare beneficiary was hospitalized under observation, and needs nursing facility care once he or she is released, Medicare will not cover the SNF services under Part A, even if the observation stay lasted at least three days. Technically, there was no hospital admission if a patient is under "observation."

If a patient does not meet the three day stay requirement and needs skilled nursing facility care, they must pay for that care out of their own pocket – which can be up to \$7,000/month.

All days spent in a hospital should be counted for purposes of the three-day hospital stay requirement for Medicare SNF post-acute coverage. This arcane and illogical policy is not in the best interests of the patient and family – the very people we are here to serve.

Observation Stay Talking Points

- Observation stays are specific, clinically appropriate services that treat and assess a patient in a hospital while a decision is being made regarding whether patients will require further treatment as hospital inpatients or whether they are able to be discharged from the hospital.
- For years, the policies governing hospital stays have been misinterpreted, misunderstood, and misconstrued to the point where they no longer serve a useful purpose and do not focus on the best interest of the patient.
- Often, patients are kept much longer than the prescribed limit for observation stays and in many cases are not told that they have not been admitted to the hospital.
- There is no clear-cut line between an inpatient stay and an observation stay, especially if the patient is elderly and frail. The three-day stay is itself an arcane gate keeping tool with no clinical foundation.
- Patients who enter a skilled nursing facility after an observation stay are not aware that their care in the facility cannot be covered by Medicare Part A because of the lack of a federally-mandated requirement that they are admitted as an inpatient for three days. This can result in patient confusion and the possibility of not receiving appropriate and necessary skilled nursing care.
- Observation stays are a pre-emptive action on the part of hospitals concerned about potential denials of inpatient stays and service reimbursement for lack of medical necessity.
- While Medicare overutilization and overpayment are legitimate concerns, the patient seems nevertheless to be lost in this shuffle. We can not ask the elderly and frail to pay with his or her health when they are stuck in this no-mans-land.
- All days spent in a hospital should be counted for purposes of the 3-day hospital stay requirement for Medicare SNF post-acute coverage. We must ensure that the patient is protected.
- Observation stays must be reconsidered as a part of the Ambulatory Payment Classification Group System. As observation stay patients are in beds, they should not be considered ambulatory and often need extensive post-acute care.
- Health care reform allows for waivers of existing regulations where they might provide a hindrance to person-centered care. Thus an “observation stay” that effectively results in depriving beneficiaries needed care and possibly contributing to re-hospitalization has no place in the new paradigm.

- The long term care profession is eager to work with hospitals, physicians and CMS to assure that beneficiaries are not deprived of necessary and Medicare covered appropriate post-acute because of lengthy observation stays.
- Patients and their families need clarity and peace of mind, especially when a loved one is unclear on how their treatments will continue once they leave the hospital.
- We are now in a new era of health care – a time for new thinking about old methods of how patients get skilled nursing care.
- The majority of people placed on observation stay are elderly and disabled, individuals with at least 5 chronic conditions, and whose care needs cannot be solely resolved through hospital observance.

ISSUE BRIEF

Observation Stays Constraining Access to Medicare Skilled Nursing Facility Services for Beneficiaries

Skilled nursing facilities (SNFs) serve our most vulnerable citizens – frail elders and those with disabilities who need complex medical, rehabilitative, and restorative care, 24 hours a day, 7 days a week. In many instances, a patient's need for these services has arisen from a medical crisis involving a stay in an acute care hospital.

However, to access the skilled nursing facility benefit under Medicare Part A, patients must be admitted to an acute care hospital for at least three days. There is a growing trend for hospitals to place patients in observation stays rather than admitting them as inpatients. If a Medicare beneficiary was hospitalized under observation, and needs SNF care once he or she is released-- Medicare will not cover the SNF services under Part A, even if the observation stay lasted at least three days. Technically, there was no hospital admission if a patient is under observation.

Placing patients in an observation stay appears to have become a pre-emptive action on the part of hospitals concerned about potential denials of inpatient stay reimbursement due to allegations that there was no medical necessity.

Observation services are defined in Medicare's manuals as a set of specific, clinically appropriate services, which include ongoing short-term treatment, assessment, and reassessment, that are furnished while a decision is being made regarding whether patients will require further treatment as hospital inpatients or should be released. The manuals suggest that a patient should not remain in observation for more than 24 hours and not more than 48 hours for exceptional circumstances. Recent trends illustrate that the frequency of observation stays is increasing as well as the duration of such stays well beyond the limits set by CMS.

The American Health Care Association (AHCA) is gravely concerned that access to SNF care for Medicare beneficiaries is being constrained by the rising use of observation stays, which precludes patients from meeting the three-day stay threshold for Medicare coverage. Representatives Joseph Courtney (D-CT) and Tom Latham (R-IA) and Senators John Kerry (D-MA) and Olympia Snowe (R-ME) share this concern and introduced the *Improving Access to Medicare Coverage Act of 2011 (S.818)* to address these situations. We request that Members of Congress cosponsor this legislation.

AHCA has long advocated that all days spent in a hospital should be counted for purposes of the three-day hospital stay requirement for Medicare SNF post-acute coverage. Solving the observation stay problem is a step in the direction of person-centered, thorough and seamless health care, which is most appropriate in light of the new era established by the enactment of the *Patient Protection and Affordable Care Act (PPACA)*. While we continue to believe that the three-day stay mandate serves as a needless gatekeeper which hinders consumer access to SNF services, the incorporation of the observation day into the three-day stay requirement is a good first step.

Ask Congress...

To cosponsor the *Improving Access to Medicare Coverage Act of 2011 (S.818)*

Key Facts

- Most SNF patients annually, 1.9 million, were Medicare beneficiaries.
- Daily, SNFs care for 1.5 million patients.
- Medicare covers 100 days of SNF care per episode of care, following a qualifying 3-day hospital stay.
- Medicare Part A pays all costs for the first 20 days of care and for the remaining 80 days, the beneficiary must pay a daily co-payment.
- Medicare observation services are defined as a set of specific, clinically appropriate services, which include ongoing short term treatment, assessment, and reassessment, that are furnished while a decision is being made regarding whether patients will require further treatment as hospital inpatients or should be released. CMS suggests a patient should not remain in observation for more than 48 hours.

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Opinion Editorial on Observation Stays

Here's a quick healthcare quiz. When is a hospital stay not a stay in the hospital? Confused? You should be. Every day, elderly Americans are reaching the same conclusion – that just because they receive care and treatment in a hospital does not mean they were ever really “there.”

Currently, Medicare requires a three-day hospital stay as an inpatient to qualify for long term care benefits. Yet it is increasingly common for hospitals to place patients under “observation” status – where they receive the same care, but hospitals avoid ever formally admitting them. If a patient is discharged to a skilled nursing facility following an observation stay, they face the possibility that their care in the facility will not be covered by Medicare Part A because they were never classified as an “inpatient” – even if they spent upwards of a week at the hospital.

You heard right: three days doesn't always mean three days. There is no clear-cut distinction between an inpatient stay and an observation stay, especially if the patient is elderly and frail. Additionally, patients are often kept much longer than the prescribed limit for observation stays. In fact, from 2007-2009 the number of patients spending four or more days under observation status doubled.

Observation status is creating extensive and increasing hardships for patients whose post-acute care in a nursing home is not covered by Medicare. Some beneficiaries have the resources to pay for needed nursing and rehabilitative care. However, many do not. Forced to then forgo necessary rehabilitative care, these individuals face the increased risk of then needing another expensive hospital stay.

Recently, Senators John Kerry (D-MA) and Olympia Snowe (R-ME) along with U.S. Representatives Joe Courtney (D-CT) and Tom Latham (R-IA) introduced the *Improving Access to Medicare Coverage Act of 2011*, which amends the Social Security Act to ensure that time spent under observation status in a hospital will count toward satisfying the three-day inpatient hospital requirement for coverage of skilled nursing and rehabilitative care services under Medicare.

For years, the policies governing hospital stays have been misinterpreted, misunderstood, and misconstrued to the point where they no longer serve a useful purpose and do not focus on the best interest of the patient. The limbo these patients are forced to endure is not fair to those who are sick, or the families caring for them. A policy that does not make sense ceases to be a useful policy – and observation stays not being included in the 3-day stay mandate does not make sense.

For Immediate Release:
DATE

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[STATE] Skilled Nursing Facilities Herald Bill on Observation Stays

*- [State Association] urges local Members of Congress to co-sponsor
bipartisan legislation –*

DATELINE – [State Association] today applauded the introduction of bipartisan legislation in both chambers of Congress to remedy the complex and confusing process surrounding observation status during a hospital stay. The *Improving Access to Medicare Coverage Act of 2011* ensures that time spent under observation status in a hospital will count toward satisfying the three-day inpatient hospital requirement for coverage of skilled nursing facility services under Medicare.

“The problem surrounding Medicare beneficiaries who need critical, skilled nursing care following an observation stay at a hospital is mounting. However, with this legislation, we’re tackling the problem head on,” said [Executive Director]. “[State] seniors deserve the peace of mind this legislation would bring - to have their post-acute care needs provided without having to worry about being left in healthcare limbo.”

Currently, patients who need to enter a skilled nursing facility following an observation stay face the possibility that their care in the facility will not be covered by Medicare Part A because of the lack of classification as a hospital inpatient. Moreover, patients are often kept much longer than the expected limit for observation stays and are not informed of their admission status.

The end result is patient and family confusion and the possibility of not receiving appropriate and necessary skilled nursing care. In some instances, patients arrive at a nursing facility, and because Medicare will not cover the benefit, they are forced to pay out-of-pocket. Many patients, when aware of the lack of skilled nursing care coverage, will return home without the needed care and are then at higher risk for returning to the hospital.

Introduced by Senators John Kerry (D-MA) and Olympia Snowe (R-ME), along with Representatives Joe Courtney (D-CT) and Tom Latham (R-IA), addresses this growing concern. [State Association] is urging all [State] Members of Congress to support the legislation and push for its ultimate approval.

“[State] seniors should not be forced to foot the bill for necessary post-acute care because of lengthy observation stays. [State Association] encourages the entire [State] Congressional delegation to uphold our commitment to our state’s Medicare beneficiaries and co-sponsor this vital, bipartisan legislation,” commented [State Executive].

[STATE BOILERPLATE]