

Support the Improving Access to Medicare Coverage Act of 2025

What the legislation does

It assures Medicare skilled nursing facility (SNF) benefit eligibility for individuals following three days of hospital care

Under longstanding statute, Medicare beneficiaries enrolled in traditional fee-for-service (FFS) Medicare benefits require a qualifying hospital stay (QHS) on an inpatient basis for at least three days to qualify for SNF benefits. An individual's time spent under observation at a hospital does not currently count towards this requirement.

The original intent of the observation stay policy was to permit an extended emergency department stay of up to 24 hours to determine whether a safe discharge or inpatient admission was necessary. Over the years, due to hospital reimbursement changes, observation stays extended to multiple days while the beneficiary received the same services as if they were an inpatient. Due to persistent problems with extended observation stays, the Centers for Medicare and Medicaid Services (CMS) implemented a 2-midnight observation stay policy in 2014 indicating observation status is appropriate if the physician expects the care to be completed before a second midnight in the hospital, otherwise the beneficiary should be classified as an inpatient. This policy has not eliminated extended hospital observation stays at the expense of reduced beneficiary access to SNF benefits and increased out of pocket (OOP) surprise billing costs.

This bill would assure beneficiary access to SNF benefits by deeming an individual receiving outpatient observation services in a hospital as an inpatient for purposes of satisfying the three-day inpatient hospital-stay requirement with respect to Medicare coverage of skilled nursing facility (SNF) services. In other words, if a beneficiary's condition requires three consecutive days in a hospital before being stabilized for discharge to a lower level of care, the beneficiary's condition rather than the administrative payment model should determine SNF benefit eligibility.

Why the legislation is needed

Unintended consequences of an antiquated 3-day QHS policy

Over the past 60 years, while the 3-day QHS policy for SNF post-hospital care benefit eligibility has remained static, fewer beneficiaries are able to access their SNF benefits resulting in reduced access to care or increase OOP expenses when obtaining SNF care. Since the 1960's, the average hospital inpatient stay has shrunk from approximately 21 days to 5.2 days due to advances in medical technology, clinical practice and the introduction of value-based payment incentives for physicians and hospitals. Additionally, changes in hospital observation stay billing practices, inpatient bed shortages, and hospital readmission measure incentives, have contributed to increased hospital observation stay classification, and arbitrarily shorter reported inpatient stays when preceded by observation stay days.

Congress has recognized the observation stay policy impacts beneficiary rights to access SNF coverage without surprise post-acute medical bills

NOTICE Act of 2015 – This legislation required hospitals to notify patients that they were outpatients and not inpatients when receiving observation services. The Medicare Outpatient Observation Notice (MOON) was introduced by CMS in March 2017 for hospitals to inform beneficiaries of their observation status and potential impact on future care, such as ineligibility for SNF benefit coverage. However, this legislation did not enable such individuals to appeal the decisions or access SNF benefits if classified as observation by the hospital.

The courts have intervened to protect beneficiary rights to access SNF benefits from inappropriate hospital observation status classification by mandating an appeals process be available

Alexander v. Azar, March 2020 – A federal court issued a decision in a nationwide class action, finding that certain Medicare beneficiaries who are admitted as hospital inpatients, but then reclassified as outpatients receiving observation have the right to appeal to Medicare for coverage as hospital inpatientsⁱ. A federal appeals court affirmed the decision in January 2022ⁱⁱ. CMS issued regulations outlining burdensome beneficiary appeal rights to obtain SNF benefits in October 2024.ⁱⁱⁱ

Counting observation days toward the Medicare SNF benefit is a common-sense policy that does not affect hospital care but protects beneficiary access to covered post-acute care without beneficiaries incurring significant out-of-pocket costs.

For these reasons, we support passage of the Improving Access to Medicare Coverage Act of 2025 (H.R. 3954).

Multiple government entities and research studies support counting hospital observation stay days towards SNF benefit eligibility

- 2013 – HHS Office of Inspector General (OIG) report – Supported counting observation days towards the 3-day QHS requirement.^{iv} Subsequent OIG Top 25 Unimplemented Recommendations reports from 2019-2022 stated “CMS should analyze the potential impacts of counting time spent as an outpatient toward the 3-night requirement for skilled nursing facility (SNF) services so that beneficiaries receiving similar hospital care have similar access to these services.”
- 2013 - The Congressionally created Long Term Care Commission recommended that CMS count observation status days toward meeting the three-day stay requirement.^v
- 2015 - The Medicare Payment Advisory Commission (MedPAC)^{vi} unanimously recommended that CMS revise the SNF 3-day rule to allow observation days to count toward meeting the requirement
- 2020 – A study found that Medicare beneficiaries residing in the most disadvantaged neighborhoods, as defined by Area Deprivation Index, are more likely to face repeated observation stays. These same patients are least likely to receive skilled nursing facility services when they need them, often leading to a cycle of repeated hospitalizations.^{vii}

How much this legislation will impact beneficiary SNF access and the Medicare Trust Fund

A CBO style scoring of the legislation conducted by Avalere Health on behalf of the American Health Care Association (AHCA) was based on 3-day waiver use for SNF stays during the COVID-19 PHE between May 2021 and April 2023. This stable period after the introduction of vaccines and therapeutics estimates the 10-year impact as follows:

- An increase in thousands of Medicare beneficiary SNF stays per year will be available to beneficiaries after being in a hospital for three consecutive days regardless of inpatient or observation status.
- A net increase in Medicare Trust Fund expenditures of only \$191 million (average \$19.1 million/year)

Why the net cost of this legislation is expected to be in the millions and not billions

The antiquated 3-day QHS policy to obtain SNF benefits applies to a shrinking portion of Medicare beneficiaries

- Over 70% of Medicare beneficiaries already have permissible access to SNF benefits under 3-day QHS waivers through Medicare Advantage (MA), ACOs, and other CMS innovation center models. This percentage is expected to grow rapidly.
 - 35.1 million enrolled in MA plans (51% of beneficiaries)^{viii}
 - 19.9 million enrolled in FFS Medicare and attributed to an ACO (20% of beneficiary)^{ix}
 - Beginning in 2026, CMS estimates that nearly 0.5 million outpatient or inpatient hospital surgical stays attributed to the Innovation Center TEAM model will have the 3-day QHS waiver as a permissible care option^x.
 - The CMS Innovation Center’s goal is to have 100% of beneficiaries enrolled in traditional FFS benefits also be attributed to an ACO.

This legislation is targeted at a small population needing three consecutive days of care in a hospital to stabilize

- Only 0.24 percent of SNF admissions during the Avalere 2-year analysis of all SNF admissions were for the limited 3-day QHS waiver provisions included in this legislation.
- Per Avalere, SNF stay costs for these limited waivers were less than for all SNF stays and for all other types of waiver stays.
- This legislation does not expand the benefit as broadly as was permitted during the COVID-19 PHE. Specifically, the benefit will not be expanded to beneficiaries that did not have a hospital encounter or were at a hospital for less than three consecutive days, regardless of inpatient or observation status.

i UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT. Alexander v. Azar

ii United States Court of Appeals For the Second Circuit. Barrows v. Becerra

iii CMS-4204-F. Medicare Program: Appeal Rights for Certain Changes in Patient Status 89 FR 83240

iv Department of Health and Human Services Office of Inspector General (OIG), July 2013 Report OEI-02-12-00040

v U.S. Senate Commission on Long Term Care. Report to Congress. September 30, 2013

vi Medicare Payment Advisory Commission (MedPAC), June 2015 Report to Congress

vii Ann M. Sheehy, MD, MS, et al, “Thirty-Day Re-observation, Chronic Re-observation, and Neighborhood Disadvantage” Mayo Clinic Proceedings, Vol. 95, Issue 12, pp. 2644-2654 (Dec. 1, 2020).

viii CMS. Medicare Enrollment Dashboard

ix CLA. By The Numbers: Medicare Continues Pushing Accountable Relationships

x FY 2025 Hospital Inpatient Prospective Payment System Proposed Rule [89 FR 35934] May 2, 2024.



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