

# Support the Improving Access to Medicare Coverage Act of 2025 (H.R. 3954)

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## What the legislation does

**This bill introduced by Rep. Joe Courtney (D-CT-2) and Rep. Glenn Thompson (R-PA-15) assures that Medicare beneficiaries are eligible for the skilled nursing facility (SNF) benefit following three days of hospital care.**

### Background

Since 1965, the Medicare statute has limited coverage in a skilled nursing facility (SNF) to beneficiaries who first spent at least three consecutive days in an acute care hospital. An individual's time spent under observation at a hospital does not currently count towards this qualifying hospital stay (QHS) requirement.

- Originally, hospitals used observation, for up to 24 hours, to determine whether a patient could be safely discharged or needed to be admitted. Over time, due to administrative changes, observation stays extended to multiple days. Patients in observation can receive the same services as a hospital inpatient.
- Concerned about extended observation stays, the Centers for Medicare & Medicaid Services (CMS) implemented a 2-midnight observation stay policy in 2013. Under this policy, a physician should admit a patient as an inpatient if he/she expects the patient to be hospitalized for at least two midnights. This policy has not eliminated extended hospital observation stays that deprive beneficiaries of access to SNF benefits. Nor has the policy reduced the increased out-of-pocket (OOP) surprise billing costs.
- During the COVID-19 public health emergency (PHE), the Centers for Medicare and Medicaid Services (CMS) waived the 3-day QHS requirement for over three years creating factual SNF utilization and cost information and academic research findings that dispels many long-held assumptions that permanently waiving any portion of the 3-day QHS requirement would be cost-prohibitive to the Medicare trust fund.
- Currently, most Medicare beneficiaries have access to SNF care without the 3-day QHS requirement as they are either enrolled in Medicare programs that permit such waivers.
  - Fifty-five percent of Medicare beneficiaries (35 million) are enrolled in a Medicare Advantage (MA) plan<sup>1</sup>.
  - Of the remaining beneficiaries in traditional fee-for-service (FFS) Medicare,
    - Over half (14.3 million) are enrolled in Accountable Care Organizations (ACOs)<sup>2</sup>,
    - Also, approximately half are in a region covered by a mandatory CMMI bundled payment model that includes SNF services as part of the total cost of care<sup>3</sup>
  - Meanwhile, the remaining small portion of Medicare FFS beneficiaries that do not have access to such programs are disproportionately disadvantaged in that they cannot access SNF benefits, even if they were in a hospital for three days, if any of those days were billed by the hospital as observation days.

**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).**

**This bill would better align Medicare FFS beneficiary access to SNF benefits with persons in MA, ACO, or bundled payment programs by counting time in observation status towards satisfying the three-day inpatient hospital-stay requirement.** In other words, if a beneficiary is hospitalized for three consecutive days, all the days are counted, regardless of whether the hospital bills Medicare Part A (inpatient) or Medicare Part B (outpatient) for the patient's stay.

1 Kaiser Family Foundation: Medicare Advantage Enrollment Grew by About 1 Million People, Mainly Due to Special Needs Plans. [link] February 23, 2026.  
2 Centers for Medicare and Medicaid Services. 2026 Medicare Accountable Care Organization Initiatives Participation Highlights. [link] February 2, 2026.  
3 Mechanic RE, et al. Mandatory Medicare Bundled Payment and the Future of Hospital Reimbursement. Am J Manag Care. 2024;30(Spec. No. 13): SPI050-SPI058. <https://doi.org/10.37765/ajmc.2024.89653>

## Cost Estimate

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)**

## Prior Legislative and Court Actions to Protect Beneficiary Access to SNF Benefits When Hospital Observation Days are Billed Have Been Inadequate

- **NOTICE Act of 2015** – This legislation required hospitals to notify patients that they were outpatients receiving observation services, rather than inpatients. The Medicare Outpatient Observation Notice (MOON) was introduced by CMS in March 2017, requiring hospitals to inform beneficiaries of their observation status and its potential impact on future care, such as ineligibility for SNF benefit coverage. However, this legislation did not enable patients to appeal the decisions or access SNF benefits if the hospital classified their stay as observation.
- **Alexander v. Azar, March 2020** – In a nationwide class action, a federal court ruled that certain Medicare beneficiaries admitted as hospital inpatients, but then reclassified as outpatients receiving observation, have the right to appeal to Medicare for coverage as hospital inpatients<sup>4</sup>. A federal appeals court affirmed the decision in January 2022.<sup>5</sup> In October 2024, CMS issued regulations setting out how beneficiaries can request an administrative appeal.<sup>6</sup>

## Multiple government entities and research studies support expanding Medicare FFS SNF benefit eligibility

- **2013** – HHS Office of Inspector General (OIG) report – Supported counting observation days towards the 3-day QHS requirement.<sup>7</sup> 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.<sup>8</sup>
- **2015** – The Medicare Payment Advisory Commission (MedPAC)<sup>9</sup> unanimously recommended that CMS revise the SNF 3-day rule to recognize allowing some outpatient observation days to count toward meeting the criterion of 3-inpatient days.
- **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.<sup>10</sup>
- **2026** – A study found that the reinstatement of the 3-day QHS requirement for Medicare FFS beneficiaries to qualify for SNF benefits at the end of the COVID-19 PHE was associated with longer hospital inpatient stays without decreases in SNF utilization or improvements in short-term health outcomes. In other words, costs of care increased upon resuming the 3-day QHS requirement just to help beneficiaries qualify for SNF benefits.<sup>11</sup>

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

- **This legislation is targeted at a small population who currently spend at least three consecutive days of care in a hospital including observation days**
  - 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.
- **The anachronistic 3-day QHS policy to obtain SNF benefits applies to a shrinking portion of Medicare beneficiaries**
  - Over 75% 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.
  - The CMS Innovation Center’s goal is to have 100% of beneficiaries enrolled in traditional FFS benefits also be attributed to an ACO.

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4 UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT. *Alexander v. Azar*

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

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

7 Department of Health and Human Services Office of Inspector General (OIG), “Hospital’s Use of Observation Stays and Short Inpatient Stays for Medicare Beneficiaries,” , OEI-02-12-00040 (Jul. 29, 2013).

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

9 Medicare Payment Advisory Commission (MedPAC), June 2015 Report to the Congress: Medicare And The Health Care Delivery System (Jun. 15, 2015), Recommendation 7-3.

10 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).

11 Chen Z, et al. Changes in Inpatient and Skilled Nursing Facility Care After the Medicare 3-Day Rule Reinstatement. *JAMA Internal Medicine*. February 9, 2026. doi:10.1001/jamainternmed.2025.7838