

TESTIMONY OF
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BEFORE THE U.S. SENATE AGING COMMITTEE:
Admitted or Not? The Impact of Medicare Observation Status on Seniors
JULY 30, 2014

Good Afternoon, Chairman Nelson, Ranking Member Collins, and distinguished members of the Committee. I'd like to thank you for holding this important hearing to examine the impact of Medicare Observation Status on seniors. I especially appreciate the opportunity to appear before you here today. My name is Bob Armstrong, and I am the Vice President of Elder Care Services for St. Mary's Health System in Lewiston Maine. St. Mary's d'Youville Pavilion is one of the largest nursing homes north of Boston and the flagship component of the elder care services offered through St. Mary's Health System. With our state-of-the-art rehab center, specialized dementia care unit, skilled and long term care, we provide our residents with the most advanced technology and skilled nursing care in the region. More importantly, we offer respect, care, and compassion to every resident.

d'Youville Pavilion offers three distinct care options. At its core is a 42-bed private room rehab center, which provides rehabilitation care principally for Medicare beneficiaries recovering from surgery, an illness, or injury. Marguerite's Garden, which is the Memory Care Unit, is our 42-bed Alzheimer's Secure Unit offering specialized care for people suffering with dementia and related forms of illness. The 126 dually certified beds in our Nursing Facility offers compassionate and friendly long-term care to our community's residents. Everyone living at St. Mary's d'Youville Pavilion, whether for a short transitional stay or as part of a long-term plan, may take part in a broad range of social activities and personal care services.

St. Mary's Health System is proud to be a member of the Maine Health Care Association (MHCA) and the American Health Care Association/National Center for Assisted Living (AHCA/NCAL). MHCA represents over 200 nursing homes and assisted living facilities, including for profit and not for profit facilities. The most recent statewide occupancy report indicates that Maine's nursing homes care for over 6,300 residents. Sixty five percent were paid for through Medicaid, 23% were private pay, and 12% were covered by Medicare.

AHCA/NCAL is the nation's largest association of long term and post-acute care providers. The association advocates for quality care and services for the frail, elderly, and individuals with disabilities. Our members provide essential care to millions of individuals in more than 12,000 not for profit and for profit member facilities.

AHCA/NCAL, its affiliates – including MHCA, and member providers advocate for the continuing vitality of the long term care provider community. The association is committed to developing and advocating for public policies that support quality care and quality of life for our nation's most vulnerable. Therefore, AHCA/NCAL is in support of policies that address the observation stays issue. I thank you, Senators Nelson and Collins for bringing this critical issue to the forefront.

As a long term care administrator for over 29 years, I have seen firsthand the impact the observation stays issue has had on residents and their families. For example, one resident, a 66 year old gentleman was admitted to my facility for short term rehab care after a hospital stay for the care and treatment of a left humerus fracture. According to the discharge documentation from the hospital, the resident was admitted to the hospital on November 9, 2013, and was discharged on November 14, 2013. The paper work clearly gave an admitting hospital diagnoses: Fall with the following injuries; including the left humerus fracture, which indicated the resident qualified under Medicare for post-hospital skilled rehab care.

We provided appropriate skilled rehab care to the resident who then successfully returned home. We believed that the resident's stay would be covered by Medicare Part A because the hospital discharge paper work clearly showed that the resident was admitted to the hospital and that they stayed in the hospital for at least three days. My facility then appropriately billed Medicare for payment, and was then told that the resident was not admitted to the hospital as an inpatient. The resident was in the hospital for five days under observation. My facility lost thousands of dollars for providing care for this resident in need with no payment from Medicare, even though this resident clearly should have received their Medicare Part A skilled nursing care benefit.

This is just one of the countless heart wrenching stories from across the country. The facts are there that the observation stays issue continues to remain a problem. In fact, in July 2013, the Office of the Inspector General reported that hospitals varied widely in their use of observation stays and, in calendar year 2012, that beneficiaries had 617,702 hospital stays that lasted at least three nights, but that did not include three inpatient nights. As a result these beneficiaries would not qualify for SNF Part A services under Medicare. The report supported counting observation days towards the three-day inpatient stay minimum requirement. In addition, according to an AARP report from last year, the use of Medicare hospital observation services grew by over 100 percent from 2001 to 2009. Finally, in September 2013, the Long Term Care Commission recommended that the Centers for Medicare and Medicaid Services (CMS) count time spent in observation status toward meeting the prior three-day stay requirement.

We must do more to ensure our nation's most vulnerable have access to the Medicare benefit they have earned and so rightly deserve. I am asking, along with AHCA/NCAL, that Congress pass and sign into law bipartisan legislation that Representatives Joe Courtney and Tom Latham, along with Senator Sherrod Brown introduced. The Improving Access to Medicare Coverage Act of 2013 (S. 569/H.R. 1179), which many on the Committee – including Senators Nelson and Collins – are cosponsors of, seeks to count all hospital days spent in observation towards the three-day inpatient stay required for Medicare coverage of Part A skilled nursing care benefits.

The association also supports legislation eliminating the three-day stay requirement, which effectively solves the related issue of observation stays. Representative Jim Renacci's bipartisan Creating Access to Rehabilitation for Every Senior (CARES) Act of 2013 (H.R. 3531) eliminates the three-day inpatient stay requirement by allowing centers that meet particular criteria to automatically qualify to waive the prior hospitalization requirement. The criteria are based on the CMS Nursing Home Compare program. In addition, we back a similar bill introduced by Representative Jim McDermott, the Fairness for Beneficiaries Act of 2013 (H.R. 3144), which also seeks to eliminate the three-day stay requirement.

It is important to note that several national patient and provider organizations have written CMS and advocated on the Hill in support of addressing the observation stays issue. In fact, AHCA/NCAL is part of the observation stays Coalition, which consists of 30 provider and beneficiary organizations working to address this issue. It is simply not right to limit access to quality care for those most in need. Now is the time for Congress to pass legislation that solves the problem. Thank you again for the opportunity to weigh in on this important matter. AHCA/NCAL looks forward to working with Members of Congress in both chambers on the observation stays issue.