CARES Act Removes Barriers to Vital Skilled Nursing Care

The American Health Care Association and National Center for Assisted Living is concerned with out-of-date barriers to skilled nursing center care. With advancements in the delivery of hospital care, inpatient stays are becoming shorter or being replaced with care that can be delivered in an outpatient setting. With this shift, the archaic three-day rule, which requires a beneficiary to spend three nights as a hospital inpatient in order to qualify for the Medicare skilled nursing benefit, is increasingly becoming a barrier for seniors who need rehabilitative services following a hospital stay.

There is bipartisan support to fix this problem. Congressman Jim Renacci (R-OH-16) has introduced H.R. 290, the Creating Access to Rehabilitation for Every Senior (CARES) Act of 2015, which would eliminate the three-day inpatient stay requirement for patients who seek care from high-quality skilled nursing providers. By allowing centers that meet certain criteria to waive the prior hospitalization requirement, this legislation would permit Medicare to cover much-needed rehabilitative services.

As length of inpatient acute stays in hospitals continues to shrink, much of this care is shifted to the outpatient setting. Often, Medicare beneficiaries are unaware of their inpatient or outpatient status. They may be called outpatients despite the fact that they spend several days and nights in hospital beds receiving care that is often indistinguishable from the care they would receive as inpatients. Should a patient require skilled nursing care following such a stay, they would be on the hook to pay for the entire cost of that care out-of-pocket, which can often be tens of thousands of dollars.1

As more inpatient care is shifted to the outpatient setting, an increasing number of Medicare beneficiaries are left uncovered. Fear of retroactive inpatient denials through an auditing process has created incentives to avoid inpatient admission. One study2 found a 34% increase in the use of outpatient to inpatient status between 2007 and 2009, leading researchers to conclude that observation outpatient status was replacing inpatient admissions.

Beneficiaries in need of skilled nursing are typically the nation’s most vulnerable and frail, and the financial burden placed on them in the current system prevents many from receiving timely and necessary care. Medicare covers short-term skilled nursing care and rehabilitation for seniors, but discriminates against seniors who need care but didn’t spend three days as a hospital inpatient. The CARES Act eliminates this barrier to care for beneficiaries and promotes quality advancement in skilled nursing centers across the country.


2 Zhanlian Feng, Brad Wright and Vincent Mor, “Sharp Rise In Medicare Enrollees Being Held In Hospitals For Observation Raises Concerns About Causes And Consequences,” Health Affairs, 31, no.6 (2012):1251-1259

Key Facts

- Medicare beneficiaries’ access to skilled nursing is being constrained by the archaic three-day stay rule and increasing use of outpatient status in hospitals.
- Beneficiaries can be in the hospital more than three days and still not qualify for a skilled nursing stay if they are deemed to be under observation during their stay.
- Many beneficiaries are often unaware of their inpatient/outpatient status.
- Unlike other post-acute care services, Medicare only requires an inpatient hospital stay for skilled nursing centers, causing further confusion for beneficiaries.
- In 2013, the OIG reported that beneficiaries had 617,702 hospital stays that lasted at least three nights, but did not include three inpatient nights; these beneficiaries did not qualify for skilled nursing center services under Medicare.