Medicare Beneficiaries: Observation Stays Deny Access to Skilled Nursing Center Care

Skilled nursing centers 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. The American Health Care Association/National Center for Assisted Living (AHCA/NCAL) is concerned that Medicare beneficiaries’ access to skilled nursing center care is being constrained by the increased use of extended hospital stays in observation status. Legislation re-introduced this Congress with bipartisan support would fix this problem.

**The Improving Access to Medicare Coverage Act of 2017** (S. 568/H.R. 1421), sponsored by Representatives Joe Courtney (D-CT) and Glenn ‘GT’ Thompson (R-PA), and Senators Sherrod Brown (D-OH), Susan Collins (R-ME), Bill Nelson (D-FL), and Shelley Moore Capito (R-WV), would address these situations. **We encourage members of Congress to support and co-sponsor this important bill.**

To access the skilled nursing center benefit under Medicare Part A, patients currently must be admitted to a hospital for at least three days. **The Improving Access to Medicare Coverage Act of 2017** would deem time an individual spends under observation status eligible to count towards satisfying the three-day stay requirement. If a Medicare beneficiary spends an extended period in the hospital as an observation patient and needs skilled nursing center care once released, the senior must pay out-of-pocket for post-acute care. Medicare will not cover skilled nursing center services under Part A, even if the observation stay lasted more than three days because, technically, the patient was not admitted as an inpatient.

Increasingly, hospitals are keeping seniors under observation for extended periods of time rather than admitting them as inpatients:

- One study found a 34% increase in the ratio of observation stays to inpatient admissions between 2007 and 2009, leading to the conclusion that outpatient observation status was becoming a substitute for inpatient status. The same study also documented increases in long-stay outpatient status, including an 88% increase in observation stays exceeding 72 hours.
- A 2013 report by the Office of Inspector General (OIG) found that in 2012, beneficiaries had 617,702 hospital stays that lasted at least three days, but that did not include three inpatient days. The pattern continued.
- A December 2016 OIG report found that 748,337 long hospital stays were called outpatient, including 633,148 outpatient stays lasting three or more days, in FY 2014. Between FYs 2013 and 2014, outpatient stays increased by 8.1%, despite implementation of the two-midnight rule, which was expected to decrease outpatient stays. In fact, the report found that the two-midnight rule has exacerbated the problem.

Support for counting time spent in observation status toward the three-day prior inpatient stay continues to grow:

- In 2012, the Inspector General recommended that the Centers for Medicare and Medicaid Services (CMS) count observation days towards the three-day inpatient stay requirement.
- In 2013, the Congressionally-created Long Term Care Commission recommended that CMS count time spent in observation status toward meeting the three-day stay requirement.
- In 2015, the Medicare Payment Advisory Commission (MedPAC) explored various policy options for counting time spent in observation toward meeting the SNF 3-day requirement. The Commission unanimously recommended that CMS revise the SNF 3-day rule to allow for up to two outpatient observation days to count toward meeting the requirement, recognizing that beneficiaries are needlessly facing barriers to accessing needed post-acute care.2
- In 2017, as in years past, AHCA/NCAL joins over 30 national provider and beneficiary groups as part of a broad coalition advocating for passage of S. 568/H.R. 1421.

1. 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.