

Issue Brief

Hospital Observation Status Harms Beneficiaries' Access to Medicare's Skilled Nursing Benefit

Background

Since the inception of the Medicare program in 1965, patients are required to have an inpatient stay in a short-term acute care hospital spanning at least three consecutive days (not counting the day of discharge) in order for Medicare to pay for a subsequent stay in a skilled nursing facility (SNF). However, acute care hospitals are increasingly classifying patients as in "observation," an outpatient designation, rather than admitting them as inpatients.

Outpatients under observation status may stay for multiple days and nights in hospital beds and receive medical and nursing care, diagnostic tests, treatments, medications, and food, just as inpatients do. However, although the care received by patients in observation status can often be indistinguishable from the care received by inpatients, outpatients who need follow-up care, such as a stay in a SNF do not qualify for Medicare's 100 day coverage in a SNF. As a result, the Medicare beneficiary ends up being responsible for paying for the SNF stay, which places an unfair burden on the beneficiary through no fault of the beneficiary. Their 100 day stay in a nursing facility which is their Medicare benefit is denied because of a billing status chosen by the hospital.

Impact of COVID-19 and the Three-Day Stay Requirement

During the COVID-19 national Public Health Emergency (PHE), CMS has waived the Medicare Part A SNF 3-day stay prior hospitalization requirement, regardless of condition, if a SNF level of care is needed. This means that a Medicare beneficiary can receive Medicare Part A SNF coverage without a qualifying 3-day hospital inpatient stay if they develop a need for a SNF level of care and could be admitted directly from the community, a doctor's office, an emergency room, from a hospital observation stay, or from a hospital inpatient stay that is less than 3-days. In addition, for certain beneficiaries who recently exhausted their SNF benefits, it authorizes renewed SNF coverage without having a 60-day wellness period, which is required by law under normal times.

SNFs can better manage senior population health by improving access for those who need clinical services. As a result of the waiver, providers in SNFs were able to furnish medically necessary care to patients who were denied hospital admission at a time when most hospitals were only admitting life-threatening cases. For seniors with comorbidities, mild symptoms could just be the beginning, and can easily become fatal when not managed timely. This can also lead to long-term, chronic diseases that can further strain the Medicare and Medicaid programs.

Ask Congress

Make permanent CMS' waiver and repeal the Medicare Part A SNF 3-day stay prior hospitalization requirement, regardless of condition, if a SNF level of care is needed.

Enact legislation that will count all hospital days spent under observation toward the Medicare 3-day stay requirement.

Key Facts

Hospitals' increased use of classifying Medicare beneficiaries as outpatients denies beneficiary access to the skilled nursing facility (SNF) benefit.

During the PHE for COVID-19, CMS has waived the three-day stay requirement for Medicare beneficiaries to help ease patient load at hospitals.

NASL and over 40 other provider organizations support the repeal of this outdated requirement that limits access to care for Medicare beneficiaries

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Both medical care and the Medicare program have changed dramatically in the last 55 years since the Medicare program was created. More than half of all Medicare beneficiaries receive coverage through Medicare programs that already waive the three-day stay requirement. When hospitals classify patients as receiving services under observation, rather than as inpatients, they deprive patients of necessary SNF care or result in surprise costs for SNF stays. Congress needs to repeal the 1965 statutory provision that limits Medicare Part A coverage in a SNF to beneficiaries who have been hospitalized as inpatients for at least three consecutive days. The time is now to simplify and modernize the Medicare program.

Congressional Activity

Congress has enacted legislation to require hospitals to inform beneficiaries when in observation status. *The Notice of Observation Treatment & Implication for Care Eligibility Act, or the **NOTICE Act** (Public Law 114-42)*, which became effective in August 2016, requires hospitals to provide written notification to patients who are classified under observation status for more than 24 hours.

However, the *NOTICE Act* and the CMS "2-Midnight Policy" do not solve the problem of SNF eligibility for beneficiaries in observation. *The Improving Access to Medicare Coverage Act of 2021 (H.R.3650)*, which was reintroduced on June 1st, would help Medicare beneficiaries who are hospitalized in observation by requiring that time spent in observation be counted towards meeting the three-day prior inpatient stay.

NASL Asks Congress to:

- Make permanent CMS' waiver and repeal the Medicare Part A SNF 3-day stay prior hospitalization requirement, regardless of condition, if a SNF level of care is needed.
- Cosponsor bipartisan legislation, the *Improving Access to Medicare Coverage Act of 2021 (H.R.3650)*, which was reintroduced in the House on June 1st. Original sponsors in the House include Representative Joe Courtney (D-CT); and Senator Sherrod Brown (D-OH) is expected to reintroduce a Senate companion bill soon. Please consider co-sponsoring this important legislation.
- The legislation creates a full and permanent solution to solve the problem of SNF eligibility for beneficiaries receiving care under observation.

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