



Medicare Observation Status: Denying Medicare Coverage for Skilled Nursing Home Care

There is an increasing trend to admit Medicare beneficiaries for “observation” as outpatients rather than admitting them as regular hospital patients. This practice may prevent patients from obtaining proper inpatient and post-hospital care under Medicare. Since many individuals with disabilities depend on Medicare as their primary health insurance coverage, this practice can have a serious impact on individuals with disabilities who may need rehabilitation or other post-hospital care.

A Medicare beneficiary who is admitted on an inpatient basis to a hospital for at least three nights is normally entitled to limited Medicare benefits post discharge for skilled care in a rehabilitation center or nursing home. Part A can cover nursing home rehab or skilled care 100% of the first 20 days and all but \$157.50 per day for up to an additional 80 days of treatment, but this benefit is only available after an “inpatient” hospital stay for the required three nights.

Unknown to many Medicare beneficiaries, Medicare for many years has differentiated between Medicare beneficiaries admitted as inpatients whose hospital stays are covered by Medicare Part A and Medicare beneficiaries admitted as outpatients for observation (outpatient care) to determine whether it is necessary to admit the beneficiary as an “inpatient”.

The Center for Medicare and Medicaid Services’ (CMS) definition of “observation status” under Part B is considered to be “outpatient” care, and is intended for assessment and treatment that can generally be performed in a 24 to 48 hour period.

Medicare beneficiary “outpatients” are covered by Part B which covers 80% (after the Part B deductible of \$147 per year) of outpatient services billed at the Medicare rate. Outpatients, even with a three night hospital stay, do not qualify for the broad 20 day full and 80 day partial Medicare coverage of post-hospital skilled care that is available under Part A after the minimum required hospital stay.

Medicare beneficiary hospital “outpatients” do not qualify for Medicare payments for post-hospital nursing home skilled care no matter how long the hospital stay or how acute and medically necessary the services provided to them.

What is Causing this Problem?

The Office of Inspector General (OIG) issued a memorandum reporting that in 2012 over 600,000 Medicare beneficiaries had hospital stays of three or more nights, but did not qualify for Part A coverage, because they were not “inpatients” for three nights. The OIG report recommends that CMS consider how to ensure that beneficiaries with similar post-hospital care needs have the same access to and cost-sharing for SNF (skilled nursing facility) services. The report states that while some hospitals classify only 5% of patients as “outpatients” others classify up to 90% as “outpatients.” This disparity reflects a significant change on the part of some hospitals that in turn has resulted in an alarming loss of Medicare coverage for Medicare beneficiaries receiving post-hospital treatment.

What is causing this increased use of observation-outpatient classification by hospitals? It appears that the auditing procedure established by Medicare in 2010 to detect and prevent Medicare fraud is the driving force behind the upswing in outpatient classifications. These audits are conducted by private contractors who are paid based upon the Medicare reimbursements to hospitals that the contractors identified as being unnecessary and required the hospitals to pay back to Medicare.

According to the American Hospital Association (AHA) there are several problems with these audits. The AHA says the contract auditors have an inherent conflict of interest with making the audits because they are paid based upon the amount of money they recover from their denials of coverage. These audits often determine that necessary medical services should have been delivered on an outpatient basis instead of by admission as a hospital patient. When the hospitals have to repay Medicare for their charges, they may be unable to re-bill Medicare under Part B rather than Part A. The hospitals thus risk losing a significant amount of revenue Medicare had paid them if they bill Medicare under Part A. Rather than risk having an inpatient bill to Medicare denied, the hospitals resort to billing Medicare for outpatient care under Part B. The subsequent loss to the patient of nursing home or rehab coverage under Part A is an unintended by-product of this practice.

The hospitals and affected Medicare beneficiaries have filed several lawsuits to get the audit process modified, and in 2013 the rules were modified to direct a physician to admit a patient as an inpatient if the physician believes the patient will require at least a two night stay. While it is sometimes helpful, this new rule does not remove the three night inpatient hospital requirement in order to have coverage for post-hospital rehabilitation or skilled care. The risk to the hospitals that Medicare may after the fact deny Part A coverage for three day hospital stays continues to affect hospital practices. This problem continues to cause hardship to patients for post-hospital care because hospitalization continues to be a requirement for nursing home and rehabilitation coverage under Part A.

The Solution to the Problem

There is a bill pending in Congress, the Improving Access to Medicare Coverage Act of 2013, (H.R. 1179) introduced by Joe Courtney (D-CT) and Tom Latham (R-IA), that would classify outpatient/observation services as inpatient services for purposes of meeting the three night hospital stay requirement for Part A coverage of hospital and post-hospital skilled care. This bill is a bi-partisan effort, supported by 106 Representatives and 24 Senators and many national organizations. It did not pass during the 2014 Session of Congress, however sponsors have reintroduced this bill in the 2015 Congressional Session. Individuals with disabilities, their family members and advocates should encourage their legislators to support this legislation.

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