

STATEMENT FOR THE RECORD
SENATE HEALTH, EDUCATION AND LABOR COMMITTEE
FULL COMMITTEE HEARING
LOWER HEALTH CARE COSTS ACT
June 18, 2019

Chairman Alexander, Ranking Member Murray, and distinguished Members of the Health, Education, Labor and Pensions Committee, thank you for the opportunity to share the perspectives of the Observation Stays Coalition as the Committee considers its bipartisan legislation to reduce health care costs and protect patients from surprise medical bills.

The undersigned organizations of the Observation Stays Coalition have come together to address a surprise medical billing issue that affects Medicare patients in hospitals who are called observation status patients or outpatients, although the medically necessary care they need and receive is no different from the medically necessary care provided to formally admitted inpatients. The classification as observation or outpatient is significant, however, because the Medicare statute covers a post-hospital stay in a skilled nursing facility only if the patient was hospitalized for three consecutive days as an *inpatient*.

Recent efforts, including your legislation, are focusing on eliminating burden and unanticipated/surprise medical bills that are having a significant negative impact on the patient's out-of-pocket-costs and the patient-provider relationship. The observation stays matter is one such area that should be addressed as part of comprehensive efforts to eliminate surprise medical bills.

Earlier this Congress, the bipartisan legislation *Improving Access to Medicare Coverage Act* (S. 753/H.R. 1682), sponsored by Senators Sherrod Brown, Susan Collins, Sheldon Whitehouse, and Shelley Moore Capito, and Representatives Joe Courtney and 'GT' Thompson, was re-introduced to update this loophole in Medicare policy to help protect seniors from high -- and often -- surprise medical costs for the skilled nursing facility care they require after hospitalization. The *Improving Access to Medicare Coverage Act* would allow for the time patients spend in the hospital under "observation status" to count toward the requisite three-day hospital stay for coverage of skilled nursing care. This legislative fix is important for several reasons, including the fact that our nation's most vulnerable seniors could be surprised with high out-of-pocket costs due to being admitted to the hospital under observation status even though they spent at least three nights in the hospital.

Counting observation status toward the 3-day inpatient requirement in the Medicare program is a common-sense policy that does not affect hospital care -- but does protect the ability of beneficiaries to receive needed post-acute nursing home care.

There are currently 33 national beneficiary and provider organizations that support S. 753/H.R. 1682, and it is our hope that this issue gets addressed in this Congress. Unfortunately, there have been countless heart-wrenching stories from older people and their families who have had to pay high out-of-pocket charges since they were deemed to be on observation status,

and Medicare did not cover their necessary skilled nursing facility care. Often, these individuals didn't even know or understand they were on observation status -- or know to ask.

In 2015 Congress passed the NOTICE Act (P.L. 114-42), addressing one of the issues associated with this observation status -- lack of notice to beneficiaries that they were under observation and not admitted. This Act requires hospitals to notify beneficiaries that they are under observation (Medicare Outpatient Observation Notice or MOON). But even if beneficiaries receive notice of observation status, they have no right to appeal and to request that their status be changed to inpatient; they are without any recourse. The notification, while a step in the right direction, nonetheless does not ensure beneficiaries have access to needed post-acute nursing home care.

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 addresses this issue once and for all. We urge you to include S. 753 in the "Lower Health Care Costs Act."

Thank you again for the opportunity to weigh in on this important matter. The Coalition looks forward to working with Members of Congress in both chambers on the observation stays issue. Contacts for the Coalition are Marsha Greenfield, LeadingAge (mgreenfield@leadingage.org); Dana Halvorson, American Health Care Association (dhalvorson@ahca.org); and Toby Edelman, Center for Medicare Advocacy (tedelman@medicareadvocacy.org).

Sincerely,

American Case Management Association (ACMA)
AMDA—The Society for Post-Acute Care and Long-Term Care Medicine
American Association of Post-Acute Care Nursing (AAPACN)
American Geriatrics Society (AGS)
American Health Care Association (AHCA)
Association of Jewish Aging Services (AJAS)
Alliance for Retired Americans
American Physical Therapy Association (APTA)
Center for Medicare Advocacy
The Gerontological Society of America
The Hartford Institute for Geriatric Nursing
The Jewish Federations of North America
Justice in Aging
LeadingAge
Lutheran Services in America
Medicare Rights Center
National Academy of Elder Law Attorneys, Inc. (NAELA)
National Association of State Long-Term Care Ombudsman Programs (NASOP)
National Association for the Support of Long Term Care (NASL)
National Committee to Preserve Social Security & Medicare
National Center for Assisted Living (NCAL)
The National Consumer Voice for Quality Long-Term Care
Society of Hospital Medicine
Special Needs Plan Alliance