

Protect and Strengthen Medicare

Medicare Hospital Outpatient and Observation Status: The Three-Day Stay Problem



The Problem

Medicare benefits for skilled nursing facilities (SNFs) hinge on a complicated concept, [the three-day rule](#). This rule requires beneficiaries to be hospital inpatients for three consecutive days before Medicare will cover SNF admittance. But Medicare beneficiaries needing hospital care often find themselves classified as “outpatients,” and/or in “Observation Status” rather than admitted as inpatients. Observation Status patients often receive care that is indistinguishable from the care provided to individuals who have been formally admitted as inpatients, and observation stays can last for several days. This penalizes patients who have no control over how they will be classified and makes the Medicare distinction between the two statuses illogical and punitive.

Background

Medicare Part A only covers SNF care for patients who have had an inpatient hospital stay for at least three consecutive days prior to their SNF admission. The three days are calculated by counting the day of admission, but not the day of discharge. Since Medicare counts days by midnights, not by 24-hour periods, the patient must be an inpatient in the hospital spanning three midnights. Thus, even if they remain in the hospital for three or more days as “outpatients,” Medicare will not cover their SNF care and they will have to pay for any subsequent SNF stay out-of-pocket, rely on another payment source like Medicaid, or forego this necessary care.

This rule does not reflect modern medical practice. Many procedures are now performed on an outpatient basis that used to require extended periods of hospitalization. [The average length of hospital stays has decreased](#), while the need for post-acute care has not. Many providers and payers are permitted to waive the inpatient requirement—including [Accountable Care Organizations](#) and [Medicare Advantage plans](#)—and most do.

While some patients are able to appeal when their status is changed from inpatient to Observation Stay/outpatient, others cannot. This leaves many beneficiaries with no options and no ability to pay for SNF coverage.

Case Studies

After suffering a fall, Ms. X's mother went to the hospital, where she was placed on "outpatient" Observation Status. She was never formally admitted but was there for 5 days under observation. As a result, she had to pay nearly \$3,000 out-of-pocket for her subsequent two week stay in a skilled nursing facility for rehabilitation.

Possible Solutions

There are several alternative approaches to address the issue of observation status and reduce the harm it causes beneficiaries.

- **Eliminate the Requirement.** Congress should amend the Medicare statute to eliminate the three-day inpatient requirement entirely for Part A coverage of a stay in a SNF.
- **Shorten the Requirement.** If full elimination is not feasible, the requirement could be shortened to a single day of inpatient stay. (The Medicare Payment Advisory Commission made this recommendation in January 2015 as a less costly proposal than either counting all time in the hospital or waiving the three-day requirement entirely.)
- **Count Observation Status as Inpatient.** Legislation like the [Improving Access to Medicare Coverage Act of 2017](#) would deem an individual receiving outpatient observation services in a hospital to be an inpatient for purposes of satisfying the three-day inpatient hospital-stay requirement with respect to Medicare coverage of SNF services.
- **Count Any One-Day Hospitalization.** Congress could alternately amend the Medicare statute to allow for Part A coverage of SNF care if a patient is hospitalized, as an inpatient or outpatient, for one day.

- **Allow Appeals of Observation Status.** At a minimum, Congress should amend the Medicare statute to explicitly authorize patient appeals of observation status. Currently, a federal appeals court has **extended appeals rights** to a subset of Medicare beneficiaries who were reclassified as outpatient after initial inpatient admission. Congress could extend appeals rights to all Medicare beneficiaries.
- **Remove Regulatory Prohibition Against Appeals of Observation Status.** Current federal regulations implementing the Notice of Observation in Treatment and Implications for Care Eligibility (NOTICE) Act—and the resulting Medicare Outpatient Observation Notice, or MOON—explicitly deny beneficiaries the option to appeal observation status. In the absence of statutory changes, CMS could revise the regulations and MOON to ease access to appeals of Observation Status.