

OBSERVATION STAYS DENY MEDICARE BENEFICIARIES ACCESS TO SKILLED NURSING CENTER CARE

SUPPORTED BY

AARP

ACMA

American Case Management Association

Aging Life Care Association

AHCA

American Health Care Association

AJAS

Association of Jewish Aging Services

Alliance for Retired Americans

**American College of
Emergency Physicians**

AMDA

The Society for Post-Acute and Long-Term Care Medicine

**Catholic Health Association of
the United States**

Center for Medicare Advocacy

**The Coalition of
Geriatric Nursing Organizations**

**The Jewish Federations of
North America**

Justice in Aging

**Leadership Council of
Aging Organizations**

LeadingAge

LSA

Lutheran Services in America

Medicare Rights Center

n4a

National Association of Area Agencies on Aging

NAELA

National Academy of Elder Law Attorneys, Inc.

NASL

National Association for the Support of Long Term Care

NASOP

National Association for State Long-Term Care
Ombudsman Programs

NCAL

National Center for Assisted Living

**National Committee to Preserve
Social Security & Medicare**

**The National Consumer Voice
for Quality Long-Term Care**

SHM

Society of Hospital Medicine

Special Needs Alliance

Medicare beneficiaries are being denied access to Medicare's skilled nursing center benefit because acute care hospitals are increasingly classifying their patients as "outpatients" receiving observation services, rather than admitting them as inpatients. Patients are called outpatients despite the fact that they may stay for many days and nights in hospital beds and receive medical and nursing care, diagnostic tests, treatments, medications, and food, just as they would if they were inpatients. Under the Medicare statute, however, patients must have an inpatient hospital stay of three or more consecutive days, not counting the day of discharge, in order to meet Medicare criteria for coverage of post-acute care in a skilled nursing center. As a result, although the care received by patients in observation status is indistinguishable from the care received by inpatients, outpatients in observation who need follow-up care in a skilled nursing center do not qualify for Medicare coverage. Hospital stays classified as observation, no matter how long and no matter the type or number of services provided, are considered outpatient. These hospital stays do not currently qualify patients for Medicare-covered care in a skilled nursing center.

Hospitals' use of observation status and the amount of time patients spend in observation status are both increasing. A study* found a 34% increase in the ratio of observation stays to inpatient admissions between 2007 and 2009, leading the researchers to conclude 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 primary motivation for hospitals' increasing use of observation status has been concern about the Recovery Audit Contractor (RAC) program, now renamed Recovery Auditors. If the RAC or another Medicare reviewer determines that a patient has been incorrectly classified as an inpatient, the hospital is denied reimbursement for most services provided to the patient, despite the fact that the services were medically necessary and coverable by Medicare. In addition, readmission penalties imposed against hospitals may increase the incentives for hospitals to label patients as outpatients. Patients who are called outpatients do not trigger any readmission penalty when they return to the hospital. Likewise, patients who have been inpatients do not trigger a readmission penalty if they return to the hospital as outpatients.

Support for counting time spent in observation status toward the three-day prior inpatient stay continues to grow. In July 2013, the Office of the Inspector General reported that hospitals varied widely in their use of observation stays and, in calendar year 2012, that beneficiaries had 617,702 hospital stays that lasted at least three nights, but that did not include three inpatient nights. These beneficiaries did not qualify for skilled nursing center services under Medicare. The report was supportive of counting observation days towards the three-day inpatient stay minimum requirement. In addition, in September 2013, the Long Term Care Commission recommended that the Centers for Medicare & Medicaid Services (CMS) count time spent in observation status toward meeting the prior three-day stay requirement.

There is bipartisan support in Congress to fix this problem. Senators Sherrod Brown (D-OH), Susan Collins (R-ME), Bill Nelson (D-FL), and Shelley Moore Capito (R-WV) and Representatives Joe Courtney (D-CT) and Joe Heck (R-NV) have introduced the Improving Access to Medicare Coverage Act of 2015 (S. 843/H.R. 1571) to help Medicare beneficiaries who are hospitalized in observation status. This legislation would require that time spent in observation be counted towards meeting the three-day prior inpatient stay that is necessary to qualify for Medicare coverage of skilled nursing center care.

*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