

# OBSERVATION STAYS DENY MEDICARE BENEFICIARIES ACCESS TO SKILLED NURSING FACILITY CARE



Medicare beneficiaries are being denied access to Medicare's skilled nursing facility (SNF) 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 SNF. 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 SNF 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 SNF.

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 SNF 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 CMS count time spent in observation status toward meeting the prior three-day stay requirement.

In August 2013, CMS released its FY 2014 inpatient payment rule. This final rule does not solve the problem because it explicitly states that days spent in observation do not count for purposes of satisfying the three-day inpatient stay requirement.

There is bipartisan support in both the House and Senate to fix this problem. Representatives Joseph Courtney (D-CT) and Tom Latham (R-IA) have introduced the **Improving Access to Medicare Coverage Act of 2013** (H.R.1179) to help Medicare beneficiaries who are hospitalized in observation status. This bill 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 SNF care. Senator Sherrod Brown (D-OH) has introduced a companion bill, S.569, cosponsored by Senator Susan Collins (R-ME).