

Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

May 5, 2018

Impact of Medicare Observation Status is far reaching

Many people are shocked when they encounter Medicare "Observation" Status during or following a hospital stay for themselves or a loved one. As beneficiaries and their families become more aware of this tactic, they and their physicians have become increasingly frustrated with a system that is costing beneficiaries thousands of dollars despite having insurance. The Center for Medicare Advocacy (CMA) (www.medicareadvocacy.org/hospitalists-continue-to-oppose-observation-status-and-call-for-significant-change/) recently wrote about this issue from the viewpoint of the Society for Hospital Medicine (SHM) who provide care to patients in hospitals.

For those who are unaware, "observation status" is when Medicare beneficiaries are *not* actually admitted to the hospital although their care is virtually indistinguishable from those patients who were formally admitted to the hospital. Those Medicare beneficiaries who are "under observation" are not billed under their Medicare Part A benefit (or their Advantage plan) but are instead billed under their Part B outpatient benefit. Medications will be paid for under their Part D or prescription drug benefit instead of through the Part A or hospital benefit. This is the first instance where Medicare beneficiaries encounter unexpected costs. Many, depending upon the Medigap plan in place or their Advantage plan parameters, have deductibles and co-insurance under Part B and most have co-payments under Part D. Even more disturbing for those who may require follow up rehab in a skilled care facility, Medicare does not pay for rehab unless the beneficiary was admitted to the hospital for three days (not counting the day of discharge). Therefore someone who appeared to have been a hospital inpatient for four or five days but was under observation for some of that time, and is transferred to a rehab facility must pay for his or her care entirely out-of-pocket.

CMA reports that hospitalists (physicians who provide care to patients in hospitals) were surveyed by the Society for Hospital Medicine (SHM) in 2014 who reported that admissions policies were still not clarified, and that observation status had negative impacts on both patients and physicians. SHM then surveyed its members (hospitalists) in 2017 and found that no improvement was noted in the satisfaction of its members with the observation status policy. They reported that nearly one in seven patients in observation status had his or her status changed while in the hospital, increasing the number of reviews and using resources that would better be spent on patient care. The NOTICE Act and the MOON (Medicare Outpatient Observation Notice) have increased patient awareness of the observation status phenomenon but have also increased patient stress levels. Patients and families often request a change of status to inpatient status but hospitalists generally believe that they cannot change the patient's status due to Medicare regulations.

SHM suggests short term solutions, including Congressional passage of the "Improving Access to Medicare Coverage Act" (H.R. 1421, S. 568) which will allow all time in the hospital count for purposes of satisfying the three-day stay requirement for rehab. They also call for CMS (Centers for Medicare and Medicaid) to clarify observation status for providers. Many providers are concerned about poor results in audits by Medicare which is often stated as the reason for failure to actually admit Medicare beneficiaries. SMH calls for comprehensive reform including eliminating observation status altogether.

See the Center for Medicare Advocacy's comprehensive materials on observation status and other issues related to Medicare on their website www.medicareadvocacy.org.