Society of Hospital Medicine

Medicare Observation Status and Three-Day Rule

Legislative Ask: SHM requests that members of Congress co-sponsor and support passage of the Improving Access to Medicare Coverage Act of 2015, which counts time spent under observation status towards the three-day stay rule for SNF coverage.

Issue Background: Medicare policy requires that patients must have at least three (3) consecutive days as a hospital inpatient in order to qualify for Medicare-covered skilled nursing facility (SNF) care. Despite the fact that the care patients under observation status receive is indistinguishable from the care received by inpatients, observation status is considered "outpatient" for billing and coding purposes. The implementation of Medicare's two-midnight rule for inpatient admissions does not alleviate SNF coverage issues for patients.

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. SHM published a white paper that covers the observation/inpatient determination and the problems it presents for both hospitalists and patients. The white paper is available at http://www.hospitalmedicine.org/observation.

Observation status has also come under broader scrutiny in a nationwide class-action lawsuit Bagnall v. Sebelius (No. 3:11-cv-01703, D. Conn) brought by the Center for Medicare Advocacy and the National Senior Citizens Law Center.

Legislative Impact: Under the current rules, patients who are physically in the hospital, but under observation status, are forced to pay for their subsequent SNF care out-of-pocket. Patients who are admitted with observation status often choose to truncate or forego care rather than paying out-of-pocket for a SNF stay. The resultant lack of medically-appropriate post-acute SNF care can result in additional problems such as dehydration, falls, and many other avoidable complications. These complications can not only lead to otherwise preventable readmissions, but also increase costs to Medicare for the treatment of conditions that were not present at the time of the original hospital stay. As providers on the frontlines of inpatient care, hospitalists see daily the problems the current law creates for Medicare beneficiaries.

The Improving Access to Medicare Coverage Act of 2015 would adjust Medicare rules to allow observation status to be counted towards the three-day inpatient rule for coverage of SNF care.

Other Supporting Organizations:

AARP, American Health Care Association, Center for Medicare Advocacy, American Case Managers Association, American Medical Directors Association, American Nurses Association, LeadingAge, National Association of Professional Geriatric Care Managers, National Committee to Preserve Social Security and Medicare