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## ***Notice of Observation Treatment and Implication for Care Eligibility (NOTICE) Act***

On Aug. 6, 2015, President Obama signed into law the “Notice of Observation Treatment and Implication for Care Eligibility (NOTICE) Act.” The federal law requires hospitals and critical access hospitals to provide both written and oral notice to Medicare patients who are placed in observation status for more than 24 hours. The notice must be provided no later than 36 hours after observation services begin, or upon the patient’s discharge, transfer or inpatient admission, whichever occurs first. In the [final](#) rule, the notice must explain the reason that the patient is placed in observation status as an outpatient and describe the implications of that status both for cost-sharing in the hospital and for subsequent “eligibility for coverage” in a skilled nursing facility.

The effective date for this notification was Aug. 6, per statutory requirement. However, the Centers for Medicare & Medicaid Services has effectively delayed implementation of the NOTICE Act beyond the Aug. 6 statutory deadline, allowing hospitals additional time to put systems and business practices into place to implement the requirements. Specifically, CMS notes that the implementation delay takes into consideration the Paperwork Reduction Act process that requires a 30-day period of public comment on the updated Medicare Outpatient Observation Notice form and time for federal officials to review comments and approve the MOON.

While the final deadline for compliance with the NOTICE Act provisions is not yet clear, CMS does state that hospitals and CAHs must fully implement use of the MOON and comply with all of the NOTICE Act requirements no later than 90 calendar days from the date of PRA approval of the MOON. CMS will announce the start of the implementation period on its Beneficiary Notices Initiative website.

The primary purpose of the NOTICE Act is to ensure that patients are made aware of the Medicare coverage implications of being placed in observation status as an outpatient rather than admitted to the hospital as an inpatient. The differences in coverage apply both to the patient’s time at the hospital and during post-acute care in a SNF. For example, cost-sharing amounts for certain items and services administered to a patient placed in outpatient observation status, such as pharmaceuticals, may be significantly higher than if the patient were an admitted inpatient. In addition, Medicare may not cover the cost of post-acute care in a SNF for a patient who was placed in outpatient observation status rather than admitted as an inpatient. Currently, Medicare requires a patient to spend three consecutive midnights as an admitted hospital patient to qualify for coverage of post-acute care in a SNF. Outpatient observation days do not count toward coverage eligibility even if the patient is admitted to the hospital for a portion of his or her stay.

The written and oral notice must explain that the individual is an outpatient receiving observation

services, and is not an inpatient of a hospital or CAH. The written notification must be signed by the individual or person acting on the individual's behalf. If the individual or patient representative refuses to sign the notice, the staff member providing the notification is to sign and date the notification. A standardized notice, the MOON, has been [proposed](#). The MOON includes all of the information to be disclosed under the law and facilities will be required to use it once finally approved. Further, the notification is to be given to otherwise eligible individuals entitled to Medicare benefits, whether or not the services furnished are payable under Medicare. For example, the MOON must be provided to a Medicare Part A patient who has not enrolled in Part B even though his or her outpatient observation services would not be covered under Medicare Part A. CMS also specifies that these notice requirements apply to Medicare fee-for-service patients and patients with a Medicare Advantage or other Medicare health plan.

The rule also details how requirements will apply when a patient's inpatient status is changed to outpatient observation due to internal utilization review and when, after discharge, a patient's inpatient status is found not to be medically reasonable and necessary by CMS reviewers.

Hospitals are highly encouraged to consult CMS guidance on the MOON. There is a [.zip file](#) that includes useful instructions to guide correct processes in the hospital and provides answers to common questions. If you have not yet begun discussion of implementation, policy development, etc., please do not delay. Likewise, if you have a process already outlined and would like to share it, please send it to me at [swillson@mhanet.com](mailto:swillson@mhanet.com). There is nothing we can find that would preclude a hospital from implementing with the proposed MOON and adopting the final version once approved.

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