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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 written and oral notice to patients who are placed in observation status for more than 24 hours. The notice must be provided no later than 36 hours after the observation services begin or upon release from the hospital or CAH, whichever occurs first. In the [proposed](#) rule issued by the Centers for Medicare & Medicaid Services to solicit public comment about the details of implementation, 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 is Aug. 6. The final rule to codify the details of implementation is expected to be published by Aug. 1.

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 significantly be 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.

Processes

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 providing the notification must sign and date it. A standardized notice, the Medicare Outpatient Observation Notice, has been [proposed](#). The MOON includes all of the information to be disclosed under the law and facilities will be required to use it. Further, it is proposed that the notification must be given to otherwise eligible individuals entitled to Medicare benefits, whether or not the services furnished are payable through 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 proposed rule also details how requirements will apply when a patient's inpatient status is changed to outpatient observation because of internal utilization review and when, after discharge, a patient's inpatient status is found not to be medically reasonable and necessary by CMS reviewers.

We will have more information and certainty once the proposed rule is finalized. In the meantime, hospitals should conduct preparatory multidisciplinary discussions on when, where, how and by whom the notice will be provided to comply with the upcoming rule.

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