

HOSPITAL “OUTPATIENT” OBSERVATION STATUS

Frequently Asked Questions

Introduction

Patients may find themselves in the hospital, receiving medical services, tests, and treatment, sometimes for many days, but learn they are considered *outpatients*, in Observation Status, *not* admitted *inpatients*. This is understandably confusing for patients and families – and difficult for hospital physicians and personnel.

This information is provided to help you understand and respond to an “outpatient” Observation Status.

Q: What is Observation Status?

A: Observation Status is a designation used by hospitals to bill Medicare. Unfortunately, it can hurt hospital patients who rely on Medicare for their health care coverage.

People who receive care in hospitals, even overnight and for several days, may learn they have not actually been admitted as inpatients. Instead, the hospital has classified them as Observation Status, which is an “outpatient” category. This designation can happen even for people who are extremely sick and spend many days in the hospital. For example, we have heard from people with recent hip and pelvic fractures who were designated as Observation Status.

The “outpatient” classification is often a surprise to patients; many do not realize their status until the patient is getting ready to leave the hospital. Hospital patients are often not told or given a written notice when they are designated as outpatients on Observation Status, although the NOTICE Act, discussed below, now requires hospitals to inform patients, both orally and in writing, when they are in observation status.

Q: Why Does Observation Status Matter?

A: When hospital patients are classified as outpatients on Observation Status, they may be charged for services that Medicare would have paid if they were formally and officially admitted as inpatients. For example, patients may be charged for their medications. (Thus, people may want to bring their medications from home if they have to go to the hospital. Note, however; many hospitals require that patients only take medicine provided by the hospital’s pharmacy.)

Most significantly, patients will not be able to obtain any Medicare coverage if they need nursing home care after their hospital stay. Medicare only covers nursing home care for patients who have a 3-day inpatient hospital stay – Observation Status doesn’t count towards the 3-day stay.

Outpatient Observation Status is paid by Medicare Part B, while inpatient hospital admissions are paid by Part A. Thus, Medicare beneficiaries who are enrolled in Part A, but not Part B, will be responsible for their entire hospital bill if they are classified as Observation Status.

Even if Medicare patients who have both Medicare Parts A and B, may be responsible for 20% of their hospital bill, which is covered under Part B, if they are considered outpatients..

Q: How Do Patients Know They Are Outpatients, or in Observation Status?

A: Since March 2017, federal law has required acute care hospitals to provide oral and written notification to patients who are classified as outpatients or Observation Status patients for more than 24 hours. Notice of non-inpatient status must be provided within 36 hours. CMS requires hospitals to use a standardized notice that it drafted, known as the Medicare Outpatient Observation Notice (MOON). After a space for the patient’s name and Medicare number, the MOON includes a blank space for the hospital to write in the clinical reason the patient is not admitted as an inpatient.

At the end of the form, on the second side, the hospital, *if it chooses*, may add more information. CMS’s instructions indicate that Additional Information may include, but is not limited to, Accountable Care Organization (ACO) information, notation that a beneficiary refused to sign the notice, hospital waivers of the beneficiary’s responsibility for the cost of self-administered drugs, Part A cost sharing responsibilities if the beneficiary is subsequently admitted as an inpatient, physician name, specific information for contacting hospital staff, or additional information that may be required under applicable state law.¹

The rest of the standardized notice describes hospital charges, coverage and payment for post-hospital care, and medication costs as well as what to do if the patient is a Medicare Advantage plan enrollee or Qualified Medicare Beneficiary through the state Medicaid program.

Q: Are There Problems with the “MOON” Notice?

A: While it is helpful that hospitals are now required to inform patients when they are considered outpatients in Observation Status, there are still problems.

- 1. First, not all outpatients** will receive notice of their non-inpatient status. The Medicare agency has decided that only hospital patients who are classified as receiving “observation services” will receive the MOON. Patients who are just classified as outpatients, even for many days, are not required to get the notice.
- 2. Second,** the Medicare agency decided that, while observation patients will get notice of their hospital status, they do not have appeal rights – that is, they cannot challenge their

¹ The MOON and instructions for its use are at <https://www.cms.gov/Medicare/Medicare-General-Information/BNi/index.html?redirect=/bni>.

observation status and ask the Medicare program to decide if they should be admitted as inpatients.

Q: What Can Patients Do If They Are in Outpatient Observation Status?

A: 1. If the patient is still in the hospital:

- Seek the doctor’s help to “admit the patient as an inpatient.”
- Remind the hospital of Medicare’s “two-midnight rule.” If the doctor expects the patient to require hospital care for at least two midnights, the hospital should be able to admit the patient as an inpatient.
- Consider other post-hospital sources of care – inpatient rehabilitation hospital (also known as inpatient rehabilitation facility), home health, outpatient therapy – that do not require a three-day inpatient stay.

Reminder: If the patient needs nursing home care after the hospital stay, it is particularly important that the patient is admitted as an inpatient. (Medicare only covers nursing home care after a 3-day inpatient hospital stay.)

2. If the patient is no longer in the hospital:

- Unfortunately, seeking inpatient coverage from Medicare after an observation stay is very difficult. Medicare currently has no official method to appeal observation status, but as of August 2017 the Center is pursuing a nationwide class action lawsuit to establish a way to appeal. See our website for more detailed instructions on options for addressing observation status: <http://www.medicareadvocacy.org/self-help-packet-for-medicare-observation-status/>
- If the patient has gone to a skilled nursing facility (SNF) and is receiving a Medicare-covered level of care (generally, five days per week of therapy or seven days per week of skilled nursing care, or a combination of the two equaling seven days per week), ask the SNF to give the resident the Notice of Exclusion from Medicare Benefits – Skilled Nursing Facility (NEMB-SNF), <https://www.cms.gov/Medicare/Medicare-General-Information/BNI/Downloads/CMS20014.pdf>. This form is used for so-called technical denials of SNF coverage. Check Option 1 to have the Medicare agency make a coverage decision.

**For more information visit the Center for Medicare Advocacy’s
Website, [MedicareAdvocacy.org](http://www.MedicareAdvocacy.org)**