



September 4, 2012

The Honorable Marilyn Tavenner  
Acting Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1589-P  
P. O. Box 8013  
Baltimore, MD 21244-1850

**Re: CMS-1589-P; Hospital Outpatient Prospective and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Electronic Reporting Pilot; Inpatient Rehabilitation Facilities Quality Reporting Program; Quality Improvement Organization Regulations**

Dear Acting Administrator Tavenner:

AARP welcomes the opportunity to submit comments regarding the Medicare Hospital Outpatient Prospective Payment System Proposed Rule. In this letter, we address Medicare coverage of hospital outpatient observation services.

### **Hospital Outpatient Observation Status**

As you know, patients in observation status are classified as hospital outpatients, not as hospital inpatients. However, in many hospitals, actual medical services provided in the inpatient and observation settings are virtually identical and patients in observation status are treated similarly to hospital inpatients. In most cases, a decision regarding whether to admit or discharge a patient is expected to be made within 24 to 48 hours. However, as CMS and the Medicare Payment Advisory Commission (MedPAC) have noted, the frequency and duration of observation stays have been increasing.

The financial impact for Medicare beneficiaries who spend time in observation can be burdensome. Medicare requires a three-day inpatient hospital stay as a precondition for Medicare coverage of skilled nursing facility (SNF) services. Time spent in observation does not count toward the three-day stay requirement, so some beneficiaries fail to qualify for Medicare coverage of SNF care, even though they have spent more than three days in the hospital being treated, for all intents and purposes, as an inpatient. These beneficiaries are then faced with either paying the full cost of their skilled nursing facility care or the denial of appropriate SNF care due to lack of Medicare coverage. In too many cases, Medicare beneficiaries are not aware that they are under observation -- and the financial implications of observation status -- until after they leave the hospital.

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Medicare beneficiaries in observation are also responsible for about 20 percent of the cost of outpatient services that are paid by Medicare Part B. In addition, since Part B does not cover the cost of self-administered drugs provided in the outpatient setting, beneficiaries are typically responsible for the full hospital charges for these drugs. These out-of-pocket costs can quickly add up to hundreds, and in some cases, thousands of dollars for Medicare beneficiaries, and be especially burdensome for the typical beneficiary living on a fixed income of just over \$20,000.

In response to your request for comments on this topic, we urge CMS to deem all time spent by a Medicare beneficiary in observation status to count toward the three day prior stay requirement for Medicare SNF coverage. In addition, we suggest CMS establish a rule that would automatically convert an observation stay to inpatient status at a set point in time, such as 48 hours, and bundle all previous and further charges related to this admission into a single payment for the inpatient stay. In the case of such a status conversion, any accumulated outpatient charges would be wiped out and the beneficiary would be liable only for the Part A deductible.

These changes would make it more likely that beneficiaries would receive the services they need and be less likely to face large, unforeseen out-of-pocket expenses and would reduce the potential for inappropriate use or abuse of observation status. It would also be simpler and fairer for beneficiaries.

AARP appreciates CMS' consideration of public comments on the important issue of observation status, especially its impact on Medicare beneficiaries, and looks forward to working with CMS to address this issue. If you have any questions about our comments or need more information, please feel free to contact Rhonda Richards of our Government Affairs staff at 202-434-3791.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Certner  
Legislative Counsel & Legislative Policy Director  
Government Affairs