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June 17, 2016

Acting Administrator Andy Slavitt
Centers for Medicare & Medicaid Services
Attention: CMS-1655-P
P.O. Box 8013
Baltimore, MD 21244-1850

Re: Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System Policy Changes and Fiscal Year 2017 Rates, etc.

Dear Acting Administrator Slavitt:

AARP, with its nearly 38 million members in all 50 States and the District of Columbia, Puerto Rico, and U.S. Virgin Islands, is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse. We appreciate the opportunity to comment on the Medicare inpatient prospective payment system, and limit our comments in this letter to the notification of Medicare beneficiaries receiving observation services.

Notification Procedures for Outpatients Receiving Observation Services

AARP strongly supported the passage of the NOTICE Act (P.L. 114-42) and is pleased to see CMS working diligently on its implementation. However, we are very disappointed in the Medicare Outpatient Observation Notice (MOON) and urge you to make changes to improve its usefulness and ensure Medicare beneficiaries' understanding. In fact, we suggest starting over, and creating a new MOON with input from the consumer and beneficiary community. Specifically, our concerns with the proposed MOON are as follows:

- The draft MOON is confusing and difficult for a lay person to understand. It assumes the individual knows what certain terms mean, and fails to make clear distinctions between the implications of being an outpatient and the implications of being an inpatient.
    - The phrase "You are not an inpatient" should be bold and stand out at the beginning of the document, rather than blended into the rest of the content.
    - The terms *inpatient*, *outpatient*, and *observation* should be clearly defined at the outset.

- The effect of observation status on cost-sharing and out-of-pocket costs, as well as its effect on the 3-day stay requirement for skilled nursing facility care (time receiving observation services does not count toward the three-day stay requirement) should be clearly labeled and highlighted. Those implications most directly impact Medicare beneficiaries, and, in the case of SNF care, should not be buried on page two.

- AARP appreciates the utility of having a standardized MOON form for hospitals to use. A form which is recognizable and consistent will be helpful to beneficiaries who may patronize more than one hospital. We urge CMS, though, to ensure that the MOON requires a hospital to enter patient-specific reasons for observation status, rather than merely providing a blank space for "additional information" which the hospital may or may not use, or a generic list of possible "reason[s] for such status as an outpatient receiving observation services." Medicare beneficiaries must understand why they are in observation and have not been admitted to the hospital. Giving the Medicare beneficiary generalizations and information that does not apply to them or their situation is unnecessarily confusing. An overly-generic MOON would also make providers and hospitals less accountable for their decisions to hold someone under observation. The person must be treated as an individual, and the admission decision should be explained on a personal level.
- Finally, the NOTICE Act requires notification after a Medicare beneficiary has been receiving observation services for 24 hours. The proposed rule specifically defines "observation services" as distinct from "outpatient" services, and applies the notification requirement to the "subset of individuals… who are receiving treatment as outpatients and are receiving observation services for more than 24 hours." The proposed rule later states that the start of the timing for notice delivery will be when "observation services are initiated." The statute states that an individual shall be given notice "not later than 36 hours after the time such individual begins receiving such services". Because it is typical for a patient to enter a hospital for outpatient services *and then* receive observation services (i.e., about 75% of observation patients come through the emergency department), an individual may be in the hospital receiving non-inpatient care for a period of time before the 24-hour clock officially starts. We urge CMS to be mindful of time spent as an outpatient, and to monitor when during the 24-36 hour window the notification is delivered.

The NOTICE Act and the proposed MOON, however, are not sufficient to address the impact on SNF eligibility for beneficiaries in observation. AARP endorses legislation, the Improving Access to Medicare Coverage Act of 2015 (H.R.1571/S.843), which would create a full and permanent solution. While fully supporting the legislation, the AARP notes that CMS has authority under existing law to count all time spent by a patient in the hospital for purposes of qualifying for Part A coverage in a SNF, and we urge you to use your existing authority to adjust observation policy.

AARP appreciates this opportunity to provide comments on this proposed rule. If you have questions, please contact Andrew Scholnick of our Government Affairs staff, at ascholnick@aarp.org or 202-434-3770.

Sincerely,

David Certner
Legislative Counsel & Legislative Policy Director
Government Affairs