



August 22, 2023

The Honorable Joe Courtney  
United States House of Representatives  
2449 Rayburn House Office Building  
Washington, DC 20515

The Honorable Glenn 'GT' Thompson  
United States House of Representatives  
400 Cannon House Office Building  
Washington, DC 20515

The Honorable Suzan DelBene  
United States House of Representatives  
2330 Rayburn House Office Building  
Washington, DC 20515

The Honorable Ron Estes  
United States House of Representatives  
2234 Rayburn House Office Building  
Washington, DC 20515

Dear Representatives Courtney, Thompson, DelBene, and Estes:

AARP, which advocates for the more than 100 million Americans age 50 and older, is pleased to endorse your bipartisan legislation, the Improving Access to Medicare Coverage Act (H.R. 5138), to help address some of the negative impacts that Medicare beneficiaries can face because of an observation stay, especially an extended one.

As you know, patients in observation status (receiving outpatient observation services) are classified as hospital outpatients, not as inpatients. However, in many hospitals, actual medical services provided in the inpatient and observation settings are very similar. Patients in observation status may stay in a hospital bed overnight or for periods of time as long as several days and receive care that may be indistinguishable to them from inpatient care. In most cases, a decision regarding whether to admit or discharge a patient is expected to be made within 24 to 48 hours. The Medicare Payment Advisory Commission (MedPAC) and the Centers for Medicare & Medicaid Services have noted that the frequency and duration of observation stays has been increasing and often exceeds 48 hours.

Unfortunately, the financial impact for Medicare beneficiaries who spend time in observation can be burdensome and significant. Traditional Medicare requires a three-day inpatient hospital stay as a precondition for Medicare coverage of skilled nursing facility (SNF) services. However, time spent in observation does not count toward the three-day stay requirement, so some beneficiaries may fail to qualify for Medicare coverage of SNF care, even though they have spent more than three days in the hospital in observation. These beneficiaries may be faced with paying thousands of dollars in surprise medical bills for the full cost of their SNF care or the denial of appropriate SNF care due to lack of Medicare coverage. In some cases, Medicare beneficiaries may forego the necessary follow-up care they need, such as therapies in SNFs, due to the cost of care.

Medicare beneficiaries in observation are also responsible for about 20 percent of the costs of outpatient services that are paid by Medicare Part B. In addition, because Part B does not cover

the cost of self-administered drugs provided in the outpatient setting, beneficiaries are typically responsible for the full cost of hospital charges for these drugs. These out-of-pocket costs can quickly add up for Medicare beneficiaries, and can be especially burdensome for those on fixed incomes.

The legislation you introduced would help address some of these issues by deeming a Medicare beneficiary receiving outpatient observation services (i.e., in observation status) as an inpatient during this time period for purposes of the three-day stay requirement. In addition, the bill would deem the date the individual stops receiving these services to be the hospital discharge date. Under the bill, these changes would apply to receipt of outpatient observation services beginning on or after January 1, 2024, but they could apply to post-hospital extended care services completed prior to enactment only if an appeal is made within 90 days of enactment. This legislation would help some beneficiaries receive the SNF services they need and help reduce unnecessary, large out-of-pocket expenses for some Medicare beneficiaries who need SNF services.

We appreciate your leadership and look forward to working with you and your colleagues on both sides of the aisle to enact this legislation. If you have any further questions, please feel free to contact me, or have your staff contact Rhonda Richards of our Government Affairs staff at [rrichards@aarpp.org](mailto:rrichards@aarpp.org).

Sincerely,



Bill Sweeney  
Senior Vice President  
Government Affairs