

## S. 5 - Observation Status Notice

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Senate Committee on Health and Welfare

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### **What is the purpose of the bill?**

This bill proposes to require hospitals to give a notice to patients who are placed on observation status.

### **Why is the bill needed?**

- Medicare does not require hospitals to inform patients that they are on observation status.
- Patients and families often are not told about observation status or what it means for cost sharing and coverage of post-hospital care.
- A uniform plain language notice given by all hospitals to patients on observation status would allow patients and their families to prepare for cost sharing and to make informed decisions about post-hospital care.

### **What is observation status?**

- Hospitals put patients in beds on “observation status” without admitting them as inpatients if they expect the patient to stay for less than two nights.
- Centers for Medicare and Medicaid Services (CMS) policy states that services provided under observation status are generally needed for 24 hours or less, but many patients remain on observation status for multiple days.
- Nationwide, Medicare beneficiaries had 1.5 million observation stays in 2012. Twenty-six percent of these stays lasted two nights and 11% lasted at least three nights.

### **Why does observation status matter?**

Observation status has consequences for the out-of-pocket cost of the hospital stay for the patient, and for the cost of a post-hospital stay at a Skilled Nursing Facility (SNF), especially for patients on Medicare.

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### Out-of-pocket hospital costs

- Medicare Part A covers institutional and community-based services including hospital, SNF, and hospice services. Medicare Part B covers supplemental medical services such as medical equipment and physician services. Medicare Part D provides prescription drug coverage.
- Hospitals bill Medicare Parts B and D for services and medications provided to patients on observation status, and bill Medicare Part A for services and medications provided to inpatients.
- Medicare Part B and D cost sharing can add up to a significant out-of-pocket expense for patients.
- Patients are often surprised to get bills for Medicare Part B and D cost sharing after a hospital stay.

### Post-hospital Skilled Nursing Facility costs

- A patient must have a qualifying three-day hospital stay in order to receive Medicare Part A coverage for a subsequent stay in a SNF.
- When a patient spends time in a hospital under observation status, it does not count toward the patient's three-day qualifying stay even if the patient is in the hospital for multiple days under observation status or the patient's status is switched to inpatient during the hospital stay.
- When a patient does not qualify for Medicare Part A coverage of SNF services, a Medicare supplement (or Medi-gap) plan will also not cover SNF services.
- Patients who need SNF services after an observation stay are often required to pay thousands of dollars out of pocket. Payment is sometimes required before a SNF will agree to take the patient.
- In 2012, Medicare beneficiaries had over 600,000 hospital stays nationwide that lasted 3 nights or more but did not qualify them for subsequent SNF services because of the use of observation status.

### What should the notice include?

The uniform plain language observation status notice should include:

- A statement that the patient is not admitted to the hospital as an inpatient but is under observation status
- A statement that observation status may affect the patient's Medicare, Medicaid, or private insurance coverage for:
  - Hospital services, including medications and pharmaceutical supplies, and
  - Care at a skilled nursing facility upon the patient's discharge
- Information about the hospital's discharge planning services
- A recommendation that the patient contact his or her health insurance provider to better understand the impact of placement in observation status on insurance coverage
- Contact information for the Vermont State Health Insurance Assistance Program (SHIP), the Office of the Health Care Advocate (HCA), and the Vermont Long Term Care Ombudsman (VOP)