



VERMONT ASSOCIATION OF  
HOSPITALS AND HEALTH SYSTEMS

MEMORANDUM

**TO:** SENATE COMMITTEE ON HEALTH AND WELFARE  
HOUSE COMMITTEE ON HEALTH CARE

**FROM:** JILL OLSON, MPA, FACHE, VP OF POLICY & LEGISLATIVE AFFAIRS

**SUBJECT:** OBSERVATION STATUS

**DATE:** JANUARY 12, 2016

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Act 54, Section 6 requested that the Vermont Association of Hospitals and Health Systems and the Office of the Health Care Advocate “consider the appropriate notice of hospital observation status that patients with commercial insurance should receive and the circumstances under which such notice should be provided.”

In 2015, the Vermont General Assembly added a provision to Vermont Statute 18 V.S.A. §1911a requiring Vermont Hospitals to provide notice to patients covered by Medicare when the patient is placed on observation status. It is not unusual for patients to be unaware that they are on observation status, rather than admitted as an inpatient, because they often stay overnight in the hospital, in a hospital room on a medical floor. In the summer of 2015, Congress followed suit and passed a similar bill that will go into effect when the federal rules are finalized, probably by the summer of 2016.

Being on observation status rather than admitted as an inpatient has two significant insurance implications for patients covered by Medicare:

- (1) Medicare coverage for rehabilitative services at a skilled nursing facility is predicated on a three day stay in the hospital (known as the “three day stay”). Because observation status is an outpatient service, it does not count toward the three day stay.
- (2) Patients are responsible for paying for a greater percentage of their outpatient services than their inpatient services under Medicare. Hospital observation status is considered an outpatient service. Currently Medicare delineates the line between observation and inpatient care using time, rather than intensity of services. Patients must be expected to be in the hospital for two consecutive midnights to be considered inpatient (known as the “two midnight rule”).

**The question of whether or not to extend the notice requirement to patients with commercial insurance hinges on whether or not observation vs. inpatient status has the same or other negative implications for patients with commercial insurance.**

Commercial insurance benefit structures vary widely and it would be impossible to review every example for every patient in a Vermont hospital. Vermont hospitals care for many people who are not covered by a Vermont insurance product. However, we reviewed the insurance products available to small businesses and individuals on Vermont Health Connect and the large group insurance products at Blue Cross Blue Shield of Vermont and MVP Health Care.

We drew the following conclusions:

- (1) There is no “three day stay” equivalent in any of the commercial products.
- (2) We could not find an example of a product where patients were responsible for a larger portion of their hospital bill based on whether or not the service was provided on an inpatient or an outpatient basis. See the attached plan summary for silver plans on the exchange as an example. “Hospital services” are considered a single category whether they are inpatient or outpatient. This benefit design better reflects the realities of health care today than Medicare’s benefit design. Most services provided by hospitals – including surgery – are provided on an outpatient basis.

We asked representatives from Blue Cross and Blue Shield of Vermont and MVP to these findings and they did not dispute them.

The Office of the Health Care Advocate reviewed its cases from 2014 and 2015 and did not find any consumer complaints by commercial insurance beneficiaries related to observation status.

Given that patients with commercial insurance are covered by a broad array of in-state and out-of-state insurance and **absent a three-day stay requirement or a different benefit for inpatient versus outpatient services in Vermont insurance products, we recommend AGAINST extending the hospital observation status notice to patients covered by commercial insurance products.** In our view such a notice would create confusion for commercial beneficiaries and would not provide them with information pertinent to their care decisions.