

CMS Launches the MOON Form OUTPATIENT OBSERVATION COMPLIANCE

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A new financial liability notice called the Medicare Outpatient Observation Notice (MOON) form is now available for use by hospitals at the Beneficiaries Notices Initiative section of the CMS website (Centers for Medicare and Medicaid, 2016). This standardized form is required by all hospitals, including critical access hospitals (CAHs), by March 8, 2017. The MOON form was mandated by the Notice of Observation Treatment and Implication for Care Eligibility (NOTICE) Act (Centers for Medicare and Medicaid, 2016). The federal NOTICE Act and the recent California legislation will both be discussed to provide the rationale for the MOON form.

The NOTICE Act, which became official legislation on August 6, 2015 (Civic Impulse, 2017), requires acute care hospitals and critical access hospitals to provide both a written AND an oral notification, no later than 36 hours after the start of services, to patients who have been in the hospital for more than 24 hours with outpatient observation status (Centers for Medicare and Medicaid, 2016). This notice will serve to clarify to Medicare patients how their outpatient observation status impacts their cost sharing responsibilities and their eligibility for skilled nursing care, SNF (Edelman, 2016). The genesis of the Act was the many concerns

THE IMPLEMENTATION OF THE NOTICE ACT AND SB 1076 WILL REQUIRE WELL THOUGHT OUT PROCESSES.

expressed to CMS by beneficiaries when their observation stay resulted in unexpected high health care bills for Part B services and non-covered SNF admissions. The MOON form serves to provide a compliant standardized means of providing beneficiaries notification of their outpatient status at the time that observation services are being provided.

In the 2017 Inpatient Prospective Payment System (IPPS) final rule, the MOON form (CMS-10611) was made available for review. CMS made many revisions to the form based upon the comments. After revision of the MOON form, there was a 30 day wait period for comments and another 90 day waiting period for approval by the Office of Business and Management as required by the Paperwork Reduction Act (Edelman, 2016).

The MOON form explains that when a physician orders an outpatient observation stay, the stay is covered under Medicare Part B. Because coverage for Part B is paid under Outpatient Prospective Payment

System, the beneficiary will incur the financial responsibilities of copayments for hospital services and 20% of most physician services. It also explains that Medicare Part A only covers a SNF stay after a qualifying stay of at least three days as an inpatient and that requires physician's order for admission as an inpatient to start the clock on the inpatient stay. Finally, the MOON form states that self-administered drugs are not covered for outpatients by Medicare Part B. Those Medicare patients with Part D coverage may be able to obtain a reimbursement for their out of pocket payments for these self-administered drugs. Alternatively, some hospitals may decide to write off the costs of the self-administered drugs to avoid disapproval of patients. If this approach is under consideration by your hospital, it is important that they are compliant with the four criteria outlined in the Office of Inspector General Policy Statement released on October 29, 2015 regarding discounting or waving self-administered drugs to avoid violating the Federal anti-kickback

statute, the civil monetary penalty and exclusion laws related to kickbacks, and the Federal civil monetary penalty law prohibit inducements to beneficiaries.

There is no explanation in the MOON form of an appeals process. This is because, unlike other CMS beneficiary notices, the NOTICE Act does not describe an appeals process. The patient can call Medicare or ask to speak with the hospital staff member who provided the notification. The hospital staff member providing the notification will need to understand the NOTICE Act and Medicare reimbursement rules to explain to the patient their cost sharing responsibilities. The MOON form does provide a Medicare telephone number and a suggestion that the patient ask to speak with the hospital's utilization or discharge planning departments. However, the determination of whether the patient is an inpatient or an outpatient is made based upon the admitting physician's judgment as reflected in the admission order.

The MOON form also has a free text field for the person who is giving the patient the notice to fill in the reason why the patient was placed in outpatient observation status. Each hospital will need to determine who is best suited for presenting the MOON form to the patient. The form

is available from CMS in both English and Spanish (Centers for Medicare and Medicaid, 2016).

CMS has not provided directions for the required oral communication to the patient of the MOON form information. A process for both the provision of the oral communication and documentation of the same will need to be developed at each site. CMS did provide directions for documenting the provision of the MOON form to a patient or patient's representative who refused to sign the form (Centers for Medicare and Medicaid, 2016).

California has also adopted legislation (SB 1076) that requires provision of notification of cost sharing and SNF eligibility implications of the outpatient observation status for Medicare patients (Information, 2016). The patient is to receive this notice, as soon as practicable, when placed into observation status or after the patient's status changes from inpatient to outpatient observation. Also, SB 1076 mandates that outpatient observation units must have signage that clearly communicates that the patients in those units are receiving outpatient services. Finally, the observation care nursing ratios are to be the same as those required for supplemental emergency services.

The implementation of the NOTICE ACT and SB 1076 will require well thought out processes for the both the written and oral presentation of the MOON notice. In addition to new processes, there will be a need for additional education of clinical and other staff members. Hopefully, there will be fewer families facing unexpected hospital bills or denials of SNF stays because of the thoughtful implementation of the notification requirements.

References

California Legislative Information. (27 September, 2016). SB-1076 General Acute Care Hospitals: Observation Services. Retrieved from [leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1076](http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1076)

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