

Elder Law : Observation status revisited

August 23, 2015 12:00 AM

Julian Gray and Frank Petrich

We've twice written in the past about the classification of certain hospital visits as "observation status." Since our last discussion, a few things have happened in regard to this classification.

As a refresher, let's review "observation status" terminology. When a Medicare patient enters a hospital, usually through the Emergency Department, physicians often have to decide whether or not to admit them as inpatients or to "observe" them.

This often can be a difficult decision, particularly when a physician is unaware if a patient lives alone or with someone else and if that person is unable or unwilling to care for the patient if there is to be a fairly quick discharge from the Emergency Department. This "observation status" can involve feeding the patient; making assessments, which can include diagnostic tests; and performing short-term treatments, including the use of drugs to determine whether the patient can be discharged or needs to be treated more intensively as an inpatient.

Because observation services are classified as outpatient services, a patient will normally have to pay out-of-pocket for co-payments (a fixed amount one must pay each time one receives a medical service) or co-insurances (the percentage of the total Medicare allowable amount paid for a service that the patient is responsible for under her/his insurance policy). These are costs the patient might not be responsible for if he or she were admitted and classified as an inpatient.

Most importantly for most of our clients is the Medicare requirement for a three-day inpatient stay for eligibility for Medicare's limited nursing facility coverage. It's important to note that when the three-day requirement was instituted, the average inpatient length of stay of a Medicare beneficiary was more than 13 days. Today, it's around five days, a 60 percent decrease while the three-day inpatient requirement hasn't changed.

In 2015, a Pennsylvania law took effect ("Hospital Observation Status Consumer Notification Act") that requires a hospital — for patients receiving more than 23 consecutive hours of onsite hospital services, which includes a hospital bed and meals in an area not in the emergency department, and where that patient has not been formally admitted to the hospital — to provide notice to that patient, both in writing

and orally, of their observation status.

Up until now, Medicare did not require hospitals to notify patients of their status. However, on Aug. 6, President Barack Obama signed into law the Notice of Observation Treatment and Implication for Care Eligibility Act (“Notice”). Twelve months from the signing of the act, if a patient has been receiving services in a hospital for more than 24 hours, the patient is to be told that he or she is in observation status. Then, if a patient is receiving such services after 36 hours, he or she must be informed orally and in writing (similar to the Pennsylvania law) of observation status.

The written notice must explain that the patient is not an inpatient, “the reasons for such status,” and what this may mean both for cost-sharing of hospital charges and for “subsequent eligibility for coverage” in a skilled nursing facility. The patient or person acting on the patient’s behalf, or, if they refuse, a staff member of the hospital, must sign the written notice.

That will provide a little more warning given of an outdated concept. Or, as a House report explaining the legislation says, the legislation provides beneficiaries with “accurate, real-time information with respect to their classification, the services and benefits available to them, and the respective cost-sharing requirements they are subject to.”

Why not just end the Medicare three-day requirement for skilled nursing coverage?

It’s about time to get some very serious discussions going about where we’re going with our increasingly aging population, their health care needs and how we’re going to provide and pay for them.

Julian Gray and Frank Petrich are both Certified Elder Law Attorneys with over 60 years of combined elder law experience who practice in the Pittsburgh area at Gray Elder Law. Send questions for consideration in this column to elderlawguys@grayelderlaw.com and visit their web site at www.grayelderlaw.com