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114TH CONGRESS
1ST SESSION

S. 843

To amend title XVIII of the Social Security Act to count a period of receipt of outpatient observation services in a hospital toward satisfying the 3-day inpatient hospital requirement for coverage of skilled nursing facility services under Medicare.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 2015

Mr. BROWN (for himself, Ms. COLLINS, Mr. NELSON, and Mrs. CAPITO) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend title XVIII of the Social Security Act to count a period of receipt of outpatient observation services in a hospital toward satisfying the 3-day inpatient hospital requirement for coverage of skilled nursing facility services under Medicare.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Improving Access to Medicare Coverage Act of 2015".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Medicare requires beneficiaries to be hospitalized for medically necessary inpatient hospital care for at least three consecutive days before covering post-hospital care in a skilled nursing facility.

(2) Often patients remain under ''observation status'' in the hospital for several days. These days are not counted toward the 3-day inpatient stay requirement because they are considered outpatient days.

(3) Hospitals' use of observation stays has increased sharply since 2006. According to the Medicare Payment Advisory Commission's March 2014 report, outpatient visits, many of which are observation stays, increased 28.5 percent between 2006 and 2012, with a simultaneous 12.6-percent decrease in inpatient stays over this same 6-year time period. A study published in Health Affairs found a 34-percent increase in the ratio of observation stays to inpatient admissions between 2007 and 2009, leading the researchers to conclude that outpatient observation status was becoming a substitute for inpatient admission. The same study also documented increases in long-stay outpatient status, including an 88-percent increase in observation stays exceeding 72 hours.

(4) To health care providers, care provided during observation is indistinguishable from the care provided to inpatients, with all medically necessary care being provided, regardless of patient status. Beneficiaries are generally not informed of their inpatient or outpatient status and assume that they are inpatients when they are placed in a hospital bed, only to find out that such care was not counted for purposes of satisfying eligibility requirements for medically prescribed Medicare coverage of post-hospital care in a skilled nursing facility.

(5) Older Americans and people with disabilities who are hospitalized but do not meet the 3-day inpatient hospital threshold simply because they were placed in ''outpatient observation status'' for some or all of their hospital stay (even when their total actual stay exceeds 3 days in the hospital), can face a significant and unexpected financial burden, which can amount to thousands of dollars, for skilled nursing facility care. Among beneficiaries who received care in a skilled nursing facility that Medicare did not cover, average out-of-pocket charges were more than $10,000 according to the Office of Inspector General.

(6) The Centers for Medicare & Medicaid Services (CMS) attempted to provide hospitals with clarity on which patients should be categorized as inpatients in its Fiscal Year 2014 inpatient payment rule. However, this rule fails Medicare beneficiaries because it does not address the problem and explicitly states that days spent in observation do not count for purposes of satisfying the 3-day inpatient stay requirement.

(7) Because of CMS' policy, which indicates days under observation do not count towards the 3-day inpatient stay requirement, some patients under observation and their families will continue to face a significant, often insurmountable financial burden if they need skilled nursing care after their hospital stay.

(8) The amendment made by this Act would update Medicare policy by deeming patients under observation as inpatients for the purposes of satisfying the 3-day inpatient stay requirement. Such amendment does not repeal the 3-day inpatient stay requirement, rather it simply expands the Secretary of Health and Human Service's administrative definition of "inpatient" for purposes of the 3-day inpatient stay requirement to include time spent under

observation. As such, it is not a reprise of the Medicare Catastrophic Coverage Act of 1988, which repealed the 3-day requirement and resulted in ''churning'' of patients back and forth from non-Medicare payment sources to Medicare Such amendment simply restores the original objective of the 3-day rule, which was to ensure that Medicare covered skilled nursing facility stays that followed hospital care for patients who stayed in the hospital for 3 days.

(9) It is the intent of this Congress, through such amendment, to allow access to skilled nursing care for the population of beneficiaries who meet medical necessity requirements for such care, but who do not satisfy the 3-day inpatient stay requirement simply because some or all of their time in the acute care hospital is characterized as ''outpatient observation status'' for billing purposes.

(10) It is the understanding of this Congress that the Secretary of Health and Human Services will monitor patterns of behavior to ensure that providers deliver appropriate and needed levels of care.

(11) The Office of the Inspector General of the department of Health and Human Services is supportive of counting hospital observation days to-

wards the 3-day inpatient stay requirement. In addition, in September 2013, the congressionally established Commission on Long-Term Care recommended that the Centers for Medicare & Medicaid Services count time spent in observation status toward meeting Medicare's 3-day inpatient stay requirement.

SEC. 3. COUNTING A PERIOD OF RECEIPT OF OUTPATIENT OBSERVATION SERVICES IN A HOSPITAL TOWARD THE 3-DAY INPATIENT HOSPITAL REQUIREMENT FOR COVERAGE OF SKILLED NURSING FACILITY SERVICES UNDER MEDICARE.

(a) IN GENERAL.—Section 1861(i) of the Social Security Act (42 U.S.C. 1395x(i)) is amended by adding at the end the following: ''For purposes of this subsection, an individual receiving outpatient observation services shall be deemed to be an inpatient during such period, and the date such individual ceases receiving such services shall be deemed the hospital discharge date (unless such individual is admitted as a hospital inpatient at the end of such period).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to receipt of outpatient observation services beginning on or after January 1, 2015, but

applies to a period of post-hospital extended care services that was completed before the date of the enactment of this Act only if an administrative appeal is or has been made with respect to such services not later than 90 days after the date of the enactment of this Act. Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement such amendment through an interim final regulation, program instruction, or otherwise.

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