

115TH CONGRESS
1ST SESSION

H. R. 1421

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 stay requirement for coverage of skilled nursing facility services under Medicare, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2017

Mr. COURTNEY (for himself, Mr. THOMPSON of Pennsylvania, Mr. DEFAZIO, Ms. DELAURO, Ms. TSONGAS, Ms. MCCOLLUM, Mr. LANGEVIN, Ms. DELBENE, Mr. HECK, Mr. WALZ, Mr. ELLISON, Mr. KILMER, Mr. SEAN PATRICK MALONEY of New York, Ms. KUSTER of New Hampshire, and Mr. SENSENBRENNER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 stay requirement for coverage of skilled nursing facility services under Medicare, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Improving Access to
3 Medicare Coverage Act of 2017”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Medicare requires beneficiaries to be hos-
7 pitalized for medically necessary inpatient hospital
8 care for at least three consecutive days before cov-
9 ering post-hospital care in a skilled nursing facility
10 under section 1861(i) of the Social Security Act (42
11 U.S.C. 1395x(i)).

12 (2) Often patients remain under “observation
13 status” in the hospital for several days and these ob-
14 servation days are not counted toward the 3-day
15 stay requirement because they are considered out-
16 patient days.

17 (3) Hospitals’ use of observation stays has in-
18 creased sharply since 2006. According to the March
19 2014 report of the Medicare Payment Advisory
20 Commission, outpatient visits, many of which are ob-
21 servation stays, increased 28.5 percent between
22 2006 and 2012, with a simultaneous 12.6 percent
23 decrease in inpatient stays over this same six-year
24 time period. A study published in Health Affairs
25 found a 34-percent increase in the ratio of observa-
26 tion stays to inpatient admissions between 2007 and

1 2009, leading the researchers to conclude that out-
2 patient observation status was becoming a substitute
3 for inpatient admission. The same study also docu-
4 mented increases in long-stay outpatient status, in-
5 cluding an 88-percent increase in observation stays
6 exceeding 72 hours.

7 (4) To health care providers, care provided dur-
8 ing observation is indistinguishable from the care
9 provided to inpatients and all medically necessary
10 care is provided, regardless of patient status. Bene-
11 ficiaries are generally not informed of their inpatient
12 or outpatient status and assume that they are inpa-
13 tients when they are placed in a hospital bed, only
14 to find out that such care was not counted for pur-
15 poses of satisfying eligibility requirements for medi-
16 cally prescribed Medicare coverage of post-hospital
17 care in a skilled nursing facility.

18 (5) Older Americans and people with disabilities
19 who are hospitalized but do not meet the 3-day inpa-
20 tient hospital stay requirement simply because they
21 were placed in “outpatient observation status” for
22 some or all of their hospital stay (even when their
23 total actual stay exceeds three days in the hospital)
24 can face a significant and unexpected financial bur-
25 den, which can amount to thousands of dollars, for

1 skilled nursing facility care. Among beneficiaries
2 who received care in a skilled nursing facility that
3 Medicare did not cover, the average out-of-pocket
4 charges were more than \$10,000, according to the
5 Office of Inspector General of the Department of
6 Health and Human Services.

7 (6) The Centers for Medicare & Medicaid Serv-
8 ices (CMS) attempted to provide hospitals with clar-
9 ity on which patients should be categorized as inpa-
10 tients in the inpatient hospital payment rule for fis-
11 cal year 2014. However, this rule fails Medicare
12 beneficiaries because it does not address the problem
13 and explicitly states that days spent in observation
14 status do not count for purposes of satisfying the 3-
15 day inpatient stay requirement.

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

23 (8) This Act updates Medicare policy by deem-
24 ing patients under observation as inpatients for the
25 purposes of satisfying the Medicare 3-day inpatient

1 stay requirement. This Act does not repeal the 3-day
2 inpatient stay requirement; rather it simply expands
3 the Secretary’s administrative definition of “inpa-
4 tient” for purposes of the 3-day stay requirement to
5 include time spent under observation. As such, it is
6 not a reprise of the Medicare Catastrophic Coverage
7 Act of 1988, which repealed the 3-day requirement.
8 This Act simply restores the original objective of the
9 3-day rule, which was to ensure Medicare coverage
10 of skilled nursing facility stays following hospital
11 care for patients who stayed in the hospital for 3
12 days.

13 (9) It is the intent of this Congress, through
14 this Act, to allow access to skilled nursing care for
15 the population of beneficiaries who meet medical ne-
16 cessity requirements for such care, but who do not
17 satisfy the 3-day inpatient stay requirement simply
18 because some or all of their time in the acute care
19 hospital is characterized as “outpatient observation
20 status” for billing purposes.

21 (10) It is the understanding of Congress that
22 the Secretary of Health and Human Services will
23 monitor patterns of behavior to ensure that pro-
24 viders deliver appropriate and needed levels of care.

1 (11) The Office of the Inspector General of the
2 Department of Health and Human Services is sup-
3 portive of counting hospital observation days to-
4 wards the 3-day inpatient stay requirement. In addi-
5 tion, in September 2013, the Congressionally estab-
6 lished Commission on Long-Term Care rec-
7 ommended that CMS’ count time spent in observa-
8 tion status toward meeting Medicare’s 3-day stay re-
9 quirement. In addition, in a December 2016 report,
10 the Office of the Inspector General of the Depart-
11 ment of Health and Human Services found that an
12 increased number of Medicare beneficiaries classified
13 as outpatients are paying more for care that is sub-
14 stantively similar, and have limited access to skilled
15 nursing facility care due to their patient status.

16 **SEC. 3. COUNTING A PERIOD OF RECEIPT OF OUTPATIENT**
17 **OBSERVATION SERVICES IN A HOSPITAL TO-**
18 **WARD THE 3-DAY INPATIENT HOSPITAL STAY**
19 **REQUIREMENT FOR COVERAGE OF SKILLED**
20 **NURSING FACILITY SERVICES UNDER MEDI-**
21 **CARE.**

22 (a) IN GENERAL.—Section 1861(i) of the Social Se-
23 curity Act (42 U.S.C. 1395x(i)) is amended by adding at
24 the end the following: “For purposes of this subsection,
25 an individual receiving outpatient observation services

1 shall be deemed to be an inpatient during such period,
2 and the date such individual ceases receiving such services
3 shall be deemed the hospital discharge date (unless such
4 individual is admitted as a hospital inpatient at the end
5 of such period).”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall apply to receipt of outpatient observa-
8 tion services beginning on or after January 1, 2017, but
9 applies to a period of post-hospital extended care services
10 that was completed before the date of the enactment of
11 this Act only if an administrative appeal is or has been
12 made with respect to such services not later than 90 days
13 after the date of the enactment of this Act. Notwith-
14 standing any other provision of law, the Secretary of
15 Health and Human Services may implement such amend-
16 ment through an interim final regulation, program in-
17 struction, or otherwise.

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