



THE SECRETARY OF HEALTH AND HUMAN
SERVICES

WASHINGTON, D.C. 20201

July 19, 2023

Katie Smith Sloan
President and CEO
LeadingAge
2519 Connecticut Ave., NW
Washington, DC 20008

Dear Katie Smith Sloan:

Thank you for your letter requesting the current waiver to the Medicare skilled nursing facility (SNF) benefit's statutory requirement for a 3-day inpatient qualifying hospital stay (the "3-day requirement") be made permanent. I appreciate your concern and the research on this issue that you shared. Thank you also for taking the time to meet recently with the Centers for Medicare & Medicaid Services (CMS) about this issue.

Section 1861(i) of the Social Security Act (the Act) specifies that Medicare covers SNF services, if the patient has a qualifying hospital stay of at least 3 consecutive calendar days as a hospital inpatient, starting with the calendar day of hospital admission but not counting the day of discharge. Additionally, Section 1812(f) of the Act allows Medicare to pay for SNF services without a 3-day qualifying hospital stay, but only if the Secretary finds that doing so will not increase total payments made under the Medicare program or change the essential acute-care nature of the SNF benefit. To date, CMS has only bypassed the 3-day requirement under this authority in a way that meets those requirements established by the existing law in the context of a declared public health emergency. As you noted in your letter, eliminating the statutory 3-day requirement of section 1861(i) of the Act on a permanent basis is an action that must be undertaken by Congress. Recent estimates by the Office of the Actuary have suggested that it could cost the Medicare program upwards of approximately \$60 billion over ten years to eliminate the 3-day requirement, primarily due to nursing home residents being shifted from Medicaid-covered long-term care stays into Medicare-covered SNF stays.

Providers should also inform patients when posthospital SNF services may not be covered by Medicare. The Notice of Observation Treatment and Implication for Care Eligibility (NOTICE) Act requires hospitals to inform observation patients of their outpatient status, along with its potential effect on cost-sharing as well as eligibility for posthospital SNF benefits. CMS implemented the NOTICE Act by developing a standardized notice, the Medicare Outpatient Observation Notice (MOON, <https://www.cms.gov/Medicare/Medicare-General-Information/BNI/index.html?redirect=/bni>), which hospitals and critical access hospitals are now required to issue to Medicare beneficiaries who receive outpatient observation services in excess

of 24 hours.

Thank you again for your letter. I understand that your team recently met with CMS Principal Deputy Administrator Jon Blum to discuss this issue, and we appreciate the additional information provided.

I appreciate the work of your membership in caring for nursing home residents, and I look forward to continuing to partner with you in our ongoing work to provide high-quality nursing home care to residents. Should you have additional recommendations, please have your staff contact the Office of Intergovernmental and External Affairs at (202) 690-6060.

Sincerely,

Xavier Baccara