Support the Improving Access to Medicare Coverage Act of 2025 (H.R. 3954)

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What the legislation does

The bill assures that Medicare beneficiaries are eligible for the skilled nursing facility (SNF) benefit following three days of hospital care.

Since 1965, the Medicare statute has limited coverage in a skilled nursing facility (SNF) to beneficiaries who first spent at least three consecutive days in an acute care hospital. An individual's time spent under observation at a hospital does not currently count towards this requirement.

Originally, hospitals used observation, for up to 24 hours, to determine whether a patient could be safely discharged or needed to be admitted. Over the years, due to the recovery audit program and hospital reimbursement changes, observation stays extended to multiple days. Observation did not affect the actual care that hospitalized patients receive. Patients in observation can receive the same medically necessary services as an inpatient.

Concerned about extended observation stays, the Centers for Medicare & Medicaid Services (CMS) implemented a 2-midnight observation stay policy in 2013. Under this policy, a physician should admit a patient as an inpatient if he/she expects the patient to be hospitalized for at least two midnights. This policy, which did not replace the three-day inpatient requirement, has not eliminated extended hospital observation stays that deprive beneficiaries of access to SNF benefits. Nor has the policy reduced the increased out-of-pocket (OOP) surprise billing costs.

This bill would ensure beneficiary access to SNF benefits by counting time in observation status towards satisfying the three-day inpatient hospital-stay requirement. In other words, if a beneficiary is hospitalized for three consecutive days, all the days are counted, regardless of whether the hospital bills Medicare Part A (inpatient) or Medicare Part B (outpatient) for the patient's stay.

Why the legislation is needed

Unintended consequences of the anachronistic 3-day QHS policy.

Over the past 60 years, Medicare's 3-day qualifying hospital stay (QHS) policy for care has led to fewer beneficiaries being able to access their Medicare SNF benefits. The result for beneficiaries is forgoing necessary SNF care or paying out-of-pocket for a SNF stay. Since the 1960's, the average hospital inpatient stay has shrunk from approximately 13 days to 5.2 days due to advances in medical practice and the introduction of value-based payment incentives for physicians and hospitals. Additionally, changes in hospital observation stay billing practices, inpatient bed shortages, and hospital readmission measure incentives, have contributed to increased numbers of patients classified as outpatient observation, and arbitrarily shorter reported inpatient stays when preceded by observation stay days.

Counting observation days toward the Medicare SNF benefit is a common-sense policy that does not affect hospital care but protects beneficiary access to covered post-acute care without beneficiaries incurring significant out-of-pocket costs.

For these reasons, we support passage of the Improving Access to Medicare Coverage Act of 2025 (H.R. 3954).

Congress has recognized the observation stay policy affects beneficiary rights to access SNF coverage without surprise post-acute medical bills

NOTICE Act of 2015 – This legislation required hospitals to notify patients that they were outpatients receiving observation services, rather than inpatients. The Medicare Outpatient Observation Notice (MOON) was introduced by CMS in March 2017, requiring hospitals to inform beneficiaries of their observation status and its potential impact on future care, such as ineligibility for SNF benefit coverage. However, this legislation did not enable patients to appeal the decisions or access SNF benefits if the hospital classified their stay as observation.

The courts have ruled that a subgroup of observation patients – those whose status is changed from inpatient to outpatient – have a constitutional right to challenge their reclassification in an administrative hearing.

Alexander v. Azar, March 2020 - In a nationwide class action, a federal court ruled that certain Medicare beneficiaries admitted as hospital inpatients, but then reclassified as outpatients receiving observation, have the right to appeal to Medicare for coverage as hospital inpatients[i]. A federal appeals court affirmed the decision in January 2022.[ii] In October 2024, CMS issued regulations setting out how beneficiaries can request an administrative appeal.[iii]

Multiple government entities and research studies support counting hospital observation stay days towards SNF benefit eligibility

- **2013** – HHS Office of Inspector General (OIG) report – Supported counting observation days towards the 3-day QHS requirement.[iv] Subsequent OIG Top 25 Unimplemented Recommendations reports from 2019-2022 stated "CMS should analyze the potential impacts of counting time spent as an outpatient toward the 3-night requirement for skilled nursing facility (SNF) services so that beneficiaries receiving similar hospital care have similar access to these services."
- **2013** - The Congressionally created Long Term Care Commission recommended that CMS count observation status days toward meeting the three-day stay requirement.[v]
- **2015** - The Medicare Payment Advisory Commission (MedPAC)[vi] unanimously recommended that CMS revise the SNF 3-day rule to recognize allowing some outpatient observation days to count toward meeting the criterion of 3-inpatient days.
- **2020** – A study found that Medicare beneficiaries residing in the most disadvantaged neighborhoods, as defined by Area Deprivation Index, are more likely to face repeated observation stays. These same patients are least likely to receive skilled nursing facility services when they need them, often leading to a cycle of repeated hospitalizations.[vii]

How this legislation will affect beneficiary SNF access and the Medicare Trust Fund

A CBO style scoring of the legislation conducted by Avalere Health on behalf of the American Health Care Association (AHCA) was based on 3-day waiver use for SNF stays during the COVID-19 PHE between May 2021 and April 2023. This stable period after the introduction of vaccines and therapeutics estimates the 10-year impact as follows:

- An increase in thousands of Medicare beneficiary SNF stays per year will be available to beneficiaries after being in a hospital for three consecutive days regardless of inpatient or observation status.
- A net increase in Medicare Trust Fund expenditures of only $191 million (average $19.1 million/year)

Why the net cost of this legislation is expected to be in the millions and not billions

The anachronistic 3-day QHS policy to obtain SNF benefits applies to a shrinking portion of Medicare beneficiaries

- Over 70% of Medicare beneficiaries already have permissible access to SNF benefits under 3-day QHS waivers through Medicare Advantage (MA), ACOs, and other CMS innovation center models. This percentage is expected to grow rapidly.
  - 35.1 million enrolled in MA plans (51% of beneficiaries)[viii]
  - 19.9 million enrolled in FFS Medicare and attributed to an ACO (20% of beneficiaries)[ix]
  - Beginning in 2026, CMS estimates that nearly 0.5 million outpatient or inpatient hospital surgical stays attributed to the Innovation Center TEAM model will have the 3-day QHS waiver as a permissible care option[x].
  - The CMS Innovation Center's goal is to have 100% of beneficiaries enrolled in traditional FFS benefits also be attributed to an ACO.

This legislation is targeted at a small population who spend at least three consecutive days of care in a hospital

- Only 0.24 percent of SNF admissions during the Avalere 2-year analysis of all SNF admissions were for the limited 3-day QHS waiver provisions included in this legislation.
- Per Avalere, SNF stay costs for these limited waivers were less than for all SNF stays and for all other types of waiver stays.
- This legislation does not expand the benefit as broadly as was permitted during the COVID-19 PHE. Specifically, the benefit will not be expanded to beneficiaries that did not have a hospital encounter or were at a hospital for less than three consecutive days, regardless of inpatient or observation status.

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i UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT. Alexander v. Azar
ii United States Court of Appeals For the Second Circuit. Barrows v. Becerra
iii CMS-4204-F. Medicare Program: Appeal Rights for Certain Changes in Patient Status 89 FR 83240
iv Department of Health and Human Services Office of Inspector General (OIG), "Hospital's Use of Observation Stays and Short Inpatient Stays for Medicare Beneficiaries," , OEI-02-12-00040 (Jul. 29, 2013).
v U.S. Senate Commission on Long Term Care. Report to Congress. September 30, 2013
vi Medicare Payment Advisory Commission (MedPAC), *June 2015 Report to the Congress*: Medicare And The Health Care Delivery System (Jun. 15, 2015), Recommendation 7-3
vii Ann M. Sheehy, MD, MS, et al, "Thirty-Day Re-observation, Chronic Re-observation, and Neighborhood Disadvantage" Mayo Clinic Proceedings, Vol. 95, Issue 12, pp. 2644-2654 (Dec. 1, 2020).
viii CMS. Medicare Enrollment Dashboard
ix CLA. By The Numbers: Medicare Continues Pushing Accountable Relationships
x FY 2025 Hospital Inpatient Prospective Payment System Proposed Rule [89 FR 35934] May 2, 2024.