



June 17, 2016

The Honorable Andy Slavitt  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Re: CMS-1665-P

*Submitted Electronically Via [www.regulations.gov](http://www.regulations.gov)*

Dear Mr. Slavitt:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefit specialists nationally. The members of NAHU work on a daily basis to help individuals and employers purchase, administer and utilize health insurance coverage, including private Medicare coverage options and private coverage to supplement traditional Medicare.

NAHU is pleased to have the opportunity to provide comment on the proposed regulation titled "Medicare Program: Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2017 Rates" published in the *Federal Register* on April 27, 2016. Specifically, NAHU members are very interested in your proposed regulatory requirements to implement the provisions of the Notice of Observation Treatment and Implications for Care Eligibility Act of 2015. The thousands of NAHU members who work in the senior market have many clients who have been affected by being classified as being on "observation" status when they are treated at a hospital. These NAHU members often help such individuals and their families navigate the resulting impact on their insurance claims and Medicare coverage. These experts in the Medicare insurance marketplace have helped develop NAHU's comments on this proposed rule, so please note that our letter reflects the views of many individuals working directly with Medicare beneficiaries in the field.

NAHU believes that in the section of the proposed rule "Proposed Hospital and CAH Notification Procedures for Outpatient Receiving Observation Services," CMS does an excellent job of outlining the problem many seniors face today. Hospitals frequently treat Medicare beneficiaries for more than 24 hours but then do not actually admit them for a wide variety of reasons. Unfortunately, the common practice of placing a beneficiary on "observation status" can have significant financial consequences for Medicare consumers, since Medicare Part A and its related coverage rules only apply to actual inpatient care admissions. The preamble of this proposed rule clearly indicates the significant financial exposure a Medicare beneficiary treated on observation status can face with regard to Medicare Part B copayments, the cost of self-administered drugs that are not covered under Part B, and the cost of post-hospital skilled nursing facility care. NAHU members appreciate CMS's clear understanding of the gravity of the situation for many seniors.



NAHU members also believe that it is worth noting that nothing is stopping hospitals from continuing the practice of placing Medicare beneficiaries on observation status and this practice is, in fact, now so common that the private insurance marketplace has developed a product to fill one of the related coverage gaps: when skilled nursing care is not covered by Medicare due to an observation status classification. However, many seniors cannot afford the cost of such “recovery care coverage” and these policies do not help consumers with the other extra costs they may face in terms of Part B cost-sharing and prescription drug expenses due to a hospital visit classified as observational.

The only thing that will give Medicare beneficiaries a better degree of understanding of their potential financial liabilities caused by being treated on observation status is the proposed notice requirements contained in this proposed rule. Given the significant consumer-protection concerns covered by this potential notice, NAHU members believe that the notice content and related delivery procedures are crucial. NAHU appreciates the proposed development of a standardized Medicare Outpatient Observation Notice (MOON) for providers to use and believes it will be very helpful to ensure that all Medicare beneficiaries receiving observation services as an outpatient receive the same statutorily required information in a clear and consistent manner. However, as drafted, we are concerned that the proposed notice and related delivery procedures might still be confusing for seniors and might not adequately warn them about their scope of financial liability. To improve the proposed notice procedures for Medicare beneficiaries, NAHU members who work regularly with Medicare beneficiaries recommend the following protections be included in the final rule and related notice documents and delivery guidelines:

1. Ensuring that the MOON is written in simple language that is readily understandable to the average Medicare beneficiary is critical. NAHU suggests the use of focus groups and would be happy to provide review feedback with Medicare clients for CMS if needed.
2. To help improve comprehension of the financial exposure a senior may face with regard to cost-sharing for care received, coverage of prescription drugs and the lack of coverage of related skilled nursing care provided after the beneficiary has been on observation status, NAHU believes that the proposed notice should include specific and detailed examples of common related coverage scenarios. Much like the summary of benefits and coverage documents provided to private health insurance beneficiaries at least annually during their enrollment and reenrollment processes contain standardized examples of common coverage scenarios and their cost-impact to the consumer, the MOON should include an example of how cost-sharing for overall treatment would be impacted by an observation status classification, an example of how the provision of a routine prescription drug by the hospital would be billed, and how skilled nursing care would likely not be covered by Medicare at all.
3. Given that an individual’s personal financial liability can vary significantly in the case of an observation status classification based on whether the individual is enrolled in a Medicare Advantage plan, a state-based coverage assistance program or a standalone part D plan -- or had original Medicare in place with or without supplemental policy -- hospitals and should also be required to use best efforts to include information about financial liability on each written notice that is specific to the beneficiary’s coverage information on file. Furthermore, the notice language should specify that the hospital must provide



beneficiaries with detailed estimates of their specific potential out-of-pocket costs on request. Finally, the preamble of the proposed rule notes that CMS has produced informational publications for beneficiaries that advise Medicare Advantage enrollees to check with their plans for information on coverage of observation services furnished to an outpatient. Hospitals could be required to distribute copies of this information publication to beneficiaries as part of the standard notice procedures.

4. To address concerns NAHU members have about important notice information being provided to seniors in a clinical setting when they may be under stress and not functioning at their best, we suggest that CMS require that hospitals provide copies of the MOON to the beneficiary's spouse and financial and/or medical power of attorney upon request.
5. In cases where the MOON should have been given to Medicare beneficiary and was not, or in cases where the MOON was not provided to the Medicare beneficiary within the applicable time parameters, then CMS and the provider should be required to provide recourse to the beneficiary by covering the care on an inpatient basis through Medicare Part A for claims and billing purposes.
6. With regard to Medicare Advantage and Part D plans that may help individuals pay for self-administered drugs that were provided by the hospital to observation status (and will likely be billed on an out-of-network basis, given that few hospital pharmacies participate in issuer networks for outpatient pharmaceuticals), NAHU suggests that the hospital pharmacies be required to work with the carrier on an in-network basis and that individuals should not be required to front out-of-pocket costs to the hospitals and request reimbursement after the fact, as the proposed rule suggests.

NAHU sincerely appreciates the opportunity to provide comment on your proposal to implement the statutory provisions of the Notice of Observation Treatment and Implications for Care Eligibility Act of 2015 through required written and oral notice requirements for hospitals. If you have any questions about our views on this important topic, or if you need more information about our proposed recommendations, please do not hesitate to contact me at either (202) 595-0787 or [jtrautwein@nahu.org](mailto:jtrautwein@nahu.org).

Sincerely,

Janet Stokes Trautwein  
Executive Vice President and CEO  
National Association of Health Underwriters