

## Medicare Recipients Must be Given Notice



All hospitals must now give Medicare recipients notice when they are in the hospital under “observation”. The notice requirement is part of a law enacted in 2015 that just took effect last year.

Signed by President Obama in August 2015, the law was intended to prevent surprises after a Medicare beneficiary spends days in a hospital under “observation” and is then admitted to a nursing home. This is important because Medicare covers nursing home stays entirely for the first 20 days, but only if the patient was first admitted to a hospital as an inpatient for at least three days. Many beneficiaries are being transferred to nursing homes only to find that because they were only under observation and were therefore hospital outpatients all along, they must pick up the tab for the subsequent nursing home stay – Medicare will pay none of it.

The law, the Notice of Observation Treatment and Implication for Care Eligibility (NOTICE) Act, does not eliminate the practice of placing patients under observation for extended periods, but it does require hospitals to notify patients under observation for more than 24 hours of their outpatient status within 36 hours, or upon discharge if that occurs sooner. The Act required hospitals to begin giving patients this notice as of March 8, 2017. Some states, including California and New York, already require such notice.

To avoid violating the law, hospitals that accept Medicare patients will now have to explain to patients under observation that because they are receiving outpatient, not inpatient, care, their hospital stay will not count toward the three-day inpatient stay requirement and that they will be subject to Medicare’s outpatient (Part B) cost-sharing requirements for hospital stays.

The law does not make hospital observation stays count towards Medicare’s three-day requirement, as some in Congress have called for doing.