

Frequently Asked Questions: Medicare Outpatient Observation Notice and NOTICE Act

Society of Hospital Medicine Public Policy Committee

Updated August 4, 2016

1. What is the NOTICE Act, when does it take effect, and what does it mean for my patients?

President Obama signed the NOTICE Act on August 5, 2015, in response to concerns about high observation cost-sharing for beneficiaries and about the lack of transparency regarding observation status. The law requires hospitals to notify patients in observation for more than 24 hours of their outpatient status.

By law implementation of the NOTICE Act and required use of the MOON was expected to go into effect on August 6, 2016. However, CMS extended this timetable to account for administrative approval of the MOON form. According to CMS' explanation in the [final Inpatient Prospective Payment System \(IPPS\) rule](#), the updated draft MOON will be subject to a 30-day public comment period, after which the agency will finalize the MOON for use in hospitals. Hospitals will then have up to 90 days to implement the notification process and begin using the MOON. In effect, the new timetable for full implementation will be towards the end of 2016 or beginning of 2017.

2. What is the MOON?

The "Medicare Outpatient Observation Notice", or "MOON," is a standardized document that Medicare developed for hospitals to use to explain observation status. All Medicare patients receiving observation services for more than 24 hours must receive a MOON.

3. Who should receive the MOON?

All Medicare patients under observation status for more than 24 hours should receive the MOON. The NOTICE Act applies to patients entitled to Medicare benefits, even if they lack Part B insurance or have a Medicare Advantage plan. It does not apply to Medicaid patients, patients with commercial insurance, or patients without insurance.

4. When do patients receive the MOON?

A patient must receive the MOON within 36 hours after the order for observation services is written.

5. Do we have to use the MOON as is, or can we edit it or make our own communication?

The MOON is a standardized CMS document and must be provided to a patient or a surrogate. Organizations may provide additional written explanations in space provided on the MOON.

6. Who has to inform patients about their status?

Any provider in an organization can inform patients of their status. Many organizations use case managers or social workers for this role, as the task requires the staff to understand and explain the implications of observation status. A patient (or representative) must sign the MOON to acknowledge receipt. If they refuse to sign, hospital staff must document delivery of the MOON and the patient's refusal.

7. Does the NOTICE Act change how I determine admission status for a patient? What if a patient requests that I change his or her status from observation to inpatient?

No changes have been made to the "Two-Midnight Rule." Admission to inpatient still requires the determination of medical necessity for hospitalization and anticipated plan of care of 2 midnights or more. The MOON may lead to more questions and requests for changes in status, but status determination remains unchanged.

8. What happens if a patient subsequently changes from observation to inpatient?

Patients who are subsequently admitted to inpatient receive another notice from Medicare, the Important Message from Medicare ([CMS-R-193](#)), prior to discharge. This document informs patients of their appeal rights.

9. What happens if my organization does not inform a patient of his/her observation status?

CMS' plans for monitoring and enforcement of the NOTICE Act are currently unknown.

10. What should I tell my patient if he/she asks me how much observation care will cost, compared to inpatient care?

This is a very difficult question to answer definitively. Depending on length of stay and services delivered, there are likely some observation stays that would cost less than an equivalent inpatient stay, and some that would cost more. Skilled nursing facility care after discharge is not covered under Medicare for patients receiving outpatient observation services. Medicare has issued inpatient and outpatient payment guidance available here: <https://www.medicare.gov/what-medicare-covers/part-a/inpatient-or-outpatient.html>.

11. My state already makes us inform patients of their observation status. How does the NOTICE Act interact with those policies?

CMS has indicated that all Medicare patients should receive the MOON, regardless of individual state policies. Hospitals would be responsible for determining whether the MOON meets individual states' requirements or if additional information must be provided to the patient.