

Agenda Item Number 10. A.

Advocacy Regarding Modification of Medicare's 3-Day Prior Hospital Stay Rule

Presenter: Ted Stevens

Action Recommended: Approve Advocacy Position and Authorize the Sending of Letters to Federal Officials

Issue Summary:

- Medicare's three-day rule establishes one of the conditions upon which Medicare payment for skilled nursing facility (SNF) care hinges. The rule requires prior hospitalization of at least three full days (measured from 12:01 AM of Day 1 through 12:00 midnight of Day 3). If this condition is met and the beneficiary meets skilled criteria (as defined by Medicare), Medicare will pay for SNF care as follows:
 - ⇒ Full cost for the first 20 days; and
 - ⇒ A portion of the cost for Days 21 through 100 (the beneficiary must pay a daily coinsurance amount).In no case will Medicare pay for SNF services beyond 100 days. However, if the three-day prior hospital stay criterion is not met, the individual has no opportunity to use any of his or her Medicare SNF benefit.
- The three-day rule was put in place shortly after Medicare's enactment in 1965. In 1989, the Congress concluded that the three-day rule should be eliminated. Several months later the Omnibus Medicare bill that ended the rule was rescinded, due to protests about unrelated changes in Medicare premiums. Although the wisdom of eliminating the three-day rule was not questioned, the issue was not revisited.
- The purpose of the rule was to assure that a beneficiary had a significant change in his/her condition which resulted in an acute health need that required post-hospital care. This effectively limited payments for skilled nursing facility care by the Medicare Trust Fund. It has been successful in achieving this purpose.

Whether this is a desirable outcome depends on your perspective. If you are an able-bodied taxpayer years from retirement, retaining the rule may seem highly attractive. If you are a low income Medicare recipient, the issue is likely to be of little concern, since Medicaid will pay for needed nursing home care. However, if you are a lower-middle to middle income Medicare recipient who wishes to protect your assets and forestall falling into poverty, securing Medicare's help in paying for the cost of a nursing home stay is highly desirable.

RECOMMENDED ACTION:

That LCOG send letters to members of Oregon's Congressional delegation and to the U.S. Centers for Medicare and Medicaid Services (CMS) urging the elimination of Medicare's three-day prior hospital stay rule and, in its place, the insertion of the following criterion to trigger Medicare payment for skilled care in a nursing facility: that the patient has experienced a significant change of condition which requires sub-acute skilled nursing care. (Note: A copy of a proposed letter to Dr. Mark McClellan, Administrator of CMS, is attached for members' review.)

Argument for Recommended Action:

In comparison to the mid-1960s, today's health care delivery system is very different. Health care procedures and technologies have advanced significantly during the last 40 years. Payment methods for medical care, including hospital care, are different, as well. As a result of these advances and changes, lengths of stays in hospitals have dropped significantly. Average hospital lengths of stay decreased 20% in the first two years after the enactment of the hospital Prospective Payment System in 1983. Changes in treatment and recovery procedures have further decreased hospital lengths of stay. Unfortunately, the three-day prior stay rule has remained unchanged, making it progressively more difficult for Medicare beneficiaries to gain access to Medicare coverage to pay for needed nursing facility care.

A hospital inpatient admission is no longer the sole marker of a significant decline in health status. An example of a condition that in the past would have resulted in an extended hospitalization is a stroke. At the time that Medicare was enacted, stroke victims would likely have remained hospitalized for at least four days and perhaps many more. Now, patients may be released from the emergency room

after a stroke. But, these patients still need rehabilitation. We believe that patients whose conditions warrant skilled nursing care should have the option of a Medicare-paid stay at a SNF even if, and perhaps especially if, medical advances have shortened their need for acute hospitalization.

Although the three-day rule has been an effective barrier to Medicare beneficiaries accessing their needed SNF benefit, we question whether it has been that effective as a cost control device. Many patients who meet inpatient hospital admission criteria could be treated less expensively by direct admission to SNFs after a thorough medical evaluation and the development of a treatment plan. Some patients who cannot access their SNF benefit forego needed treatment and rehabilitation, resulting in further decline in health status and additional hospital admissions.

Board Members Questions regarding this matter may be addressed to me either prior to (682-4432; tstevens@lane.cog.or.us) or at the April Board meeting.

Attachment

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