STRATEGIC MANAGEMENT SERVICES

Medicare Patients Can Appeal Involuntary Move From Inpatient To Observation Status

Natalie S. Lesnick | February 24, 2022

Hospitalized Medicare beneficiaries who were switched from inpatient to observation status can appeal the move according to a recent federal court decision. The Second Circuit Court of Appeals ruled that failing to provide beneficiaries an appeals process violated their constitutional rights. The judgment, a culmination of 11 years of class action litigation, makes it easier for beneficiaries to be covered for initial post-acute care such as in a skilled nursing facility. Medicare requires a minimum of three consecutive inpatient days for a beneficiary to qualify for such coverage.

Under existing practices, formal appeal procedures are readily available for providers to challenge a finding that a hospital's Part A inpatient claims were improperly submitted; however, no such appeal rights exist for beneficiaries. The Court affirmed a lower court finding that Medicare violated beneficiary due process rights when hospital utilization review committees (URCs) reclassified inpatient admissions to observation status without providing a mechanism to appeal that decision.

The Court's decision is binding in Connecticut, Vermont, and New York only, making it unclear whether organizations outside these states should prepare for this new administrative requirement. Also unclear is whether the Centers for Medicare and Medicaid Services (CMS) will move to expand this new appeals requirement to all Medicare beneficiaries who are moved from inpatient to observation status, or if they will open the process to all parts of the country or maintain a narrow scope based on the decision. This lack of clarity leaves hospitals in the dark on the impact of the decision on operations based on which beneficiaries qualify for an appeal, and what steps hospitals may need to take to provide the necessary due process. These steps could very well add administrative burden on the hospital and offset reimbursement gains realized by hospitals being able to bill those claims under Medicare Part A. Questions also remain as to who will hear the appeals, which party will pay for them, or where the patient will receive care while

the appeal is being heard. Unfortunately, this leaves open concerns about cost, scope, and administration as result of a new appeals process.

Compliance Officers should remain alert for supplemental guidance and regulations that CMS may issue as a result of the Court's decision.

For more information on this topic, contact Natalie Lesnick, JD, at nlesnick@strategicm.com

About the Author

Natalie Lesnick is an Associate Consultant at Strategic Management Services, LLC. Ms. Lesnick has expertise in assessing provider compliance with the federal healthcare program rules and federal healthcare laws, including HIPAA and the Affordable Care Act.