

S. 1349, the Notice of Observation, Treatment and Implication for Care Eligibility (NOTICE)
Act of 2015

Section 1. Short Title

Current Law

No provision

S. 1349

This act would be cited as the Notice of Observation, Treatment, and Implication for Care Eligibility (NOTICE) Act of 2015.

Sec. 2. Medicare Requirement for Hospital Notifications of Observation Status.

Current Law

Under Medicare payment rules, services furnished to beneficiaries as hospital inpatients are generally billed under the Inpatient Prospective Payment System, while services furnished to outpatients are generally billed under the Outpatient Prospective Payment System. Beneficiaries' liability for Medicare cost-sharing can be impacted by whether the beneficiary was admitted as an inpatient or treated on an outpatient basis. In general, Medicare Part A requires beneficiaries to pay an inpatient deductible (\$1,260 in CY2015) if they are admitted to the hospital. For beneficiaries who receive hospital outpatient services, beneficiaries typically pay 20 percent of the Medicare reimbursement amount for outpatient items and services after paying the annual Part B deductible (\$147 in CY2015). Therefore, beneficiaries who receive several outpatient services could potentially have greater cost-sharing liabilities as an outpatient under observation than if they were admitted as an inpatient to the hospital. In 2012, according to the Health and Human Services Office of Inspector General, for 6 percent of all observation stays, beneficiaries paid more than the inpatient deductible.

In addition, beneficiaries' coverage for Medicare skilled nursing facility (SNF) services can depend on whether or not they were admitted to an acute care hospital as an inpatient, or were treated as an outpatient. To receive coverage for SNF services following a beneficiary's hospitalization, the Medicare statute requires that the beneficiary had a qualifying hospital inpatient stay of at least three consecutive days. For purposes of SNF coverage, the time spent under observation does not count towards the requirement of a three-day hospital inpatient stay. The number of Medicare beneficiaries receiving outpatient observation care over the last several years has been steadily increasing. Some beneficiaries are surprised to learn that although having received treatment overnight in a hospital bed, the beneficiary was never formally admitted as an inpatient but was instead a hospital outpatient. In most cases, beneficiaries who spend 24 hours or more in a hospital as an outpatient are under "observation." Observation care is often characterized as a component of emergency medicine which allows hospitals to triage patients who do not immediately require a hospital inpatient admission but are too sick to immediately discharge. Under observation, the hospital provides assessment, ongoing short-term treatment,

and reassessment before determining whether or not the patient should be admitted as an inpatient for additional treatment or the patient is well enough to be discharged from the outpatient department.

S. 1349

Beginning one year after the date of enactment, S. 1349 would require hospitals and critical access hospitals to provide a written notification to an individual who has received observation services for more than 24 hours, that explains: (1) the status is outpatient and not inpatient care, and the reasons for such status, (2) the implications of such status for cost-sharing requirements under Medicare and eligibility for SNF care, and (3) other information the Secretary determines appropriate. The written notification is to be provided no later than 36 hours after the time the individual began receiving observation care and must be signed by such individual (or a person acting on the individual's behalf) or by the staff member of the hospital or critical access hospital that provided such notification in cases where the individual refuses to provide a signature. The written notification must be formatted using plain language and made available in appropriate languages as determined by the Secretary. An oral explanation of the written notification must also be provided.