



Real Possibilities

Testimony of AARP CT

H.B. # 5535: AN ACT CONCERNING NOTICE OF A PATIENT'S OBSERVATION STATUS AND NOTICE CONCERNING THE QUALIFICATIONS OF THOSE WHO PROVIDE HEALTH CARE AND COUNSELING SERVICES

March 14, 2014

Dear Members of the Public Health Committee,

Thank you for the opportunity to comment on **H.B. 5535, Section 1**, regarding notice for a patient's hospital observation status. AARP is a nonpartisan social mission organization with an age 50+ membership of nearly 37 million nationwide, and over 602,000 here in Connecticut. AARP believes that one's possibilities should never be limited by their age and that, in fact, age and experience can expand your possibilities, whether they be personal or professional. AARP is a network of people, tools and information and an ally on issues that affect the lives of our members and the age 50+ population in general.

Today, AARP offers our support of the proposed notification requirement outlined in Section 1 of H.B. 5535. The focus of Section 1 is very simple: hospitals should notify patients when they are in observation status and classified as outpatients, and help them to understand the impact that outpatient status may have on the patient's coverage and costs.

Recently, the Medicare Payment Advisory Commission and the Centers for Medicare & Medicaid Services have noted that frequency and duration of observation stays has been increasing. Patients in observation status are classified as hospital outpatients, not inpatients. In many hospitals, actual medical services provided in the inpatient and observation settings are virtually identical, so it's not always clear to patients how they have been classified. Patients are called outpatients despite the fact that they may stay for many days and nights in hospital beds and receive medical and nursing care, diagnostic tests, treatments, medications, and food just as if they would if they were inpatients.

Unfortunately, the financial impact for Medicare beneficiaries who spend time under observation can be burdensome, and this bill makes sure that patients are made aware of this. Due to the loophole in Medicare law relating to payment for hospital outpatient services, Medicare beneficiaries under observation may be responsible for out-of-pocket costs that substantially exceed the 20 percent coinsurance imposed for other Medicare Part B services. In addition, since Part B does not cover the cost of self-administered drugs provided in the outpatient setting, these beneficiaries are typically responsible for the full hospital charges for these drugs. These out-of-pocket costs can quickly add up, especially for beneficiaries on fixed incomes.

In addition, time spent under observation does not count toward the three-day prior inpatient stay required for Medicare coverage of skilled-nursing facility services, so some beneficiaries who need this post-acute care may fail to qualify for coverage, even though they have spent more than three days in the hospital under observation. Hospital stays classified as observation, no matter how long and no matter the type or number of services provided, are considered outpatient. These hospital stays do not currently qualify patients for Medicare-covered care in a skilled-nursing facility.

Because of the serious potential impact on a patient's out-of-pocket costs, outpatient status should be communicated to the patient while they are in the hospital, rather than coming as a surprise later. This will help reduce beneficiary confusion about what services and costs will be covered by Medicare.

There are bi-partisan efforts currently underway at the federal level led by Connecticut's Second District Congressman, Rep. Joe Courtney, to deem a Medicare beneficiary receiving outpatient observation services as an inpatient during this time period. AARP has endorsed that legislation—Improving Access to Medicare Coverage Act—but, in the meantime, Section 1 of H.B. 5535 may provide some benefit to consumers in understanding their cost sharing obligations and potentially provide the tools to take action and have their status resolved. Under this approach, the notification and referral to the Health Care Advocate may help consumers understand their cost sharing obligations. However, it is crucial that the patient is well enough, when notification is received, to understand the information provided so that they (or a family caregiver) can advocate for a change in status while they are still in the hospital.

AARP recommends the following changes to strengthen H.B. 5535, Section 1:

1. Require that the standard elements of the notice be set forth in regulation through a collaborative stakeholder process. This would provide an opportunity for additional stakeholder consideration and input resulting in a more effective and useful notice;
2. Include a sunset provision should Congress fix Medicare policies regarding outpatient status (e.g. with passage of the Improving Access to Medicare Coverage Act). For example, Connecticut could include text from a similar notification proposal in Pennsylvania:

"... (a) Notice.--If the Federal Government amends 42 CFR 409.30(a)(1) (relating to basic requirements) to eliminate or modify the Medicare three-day qualifying hospital stay requirement in a manner that makes the notification required under section [#] unnecessary, the [Commissioner of Public Health] shall submit notice of the amendment for publication in the [Connecticut Law Journal].

(b) Time.--This act shall expire upon publication of the notice under subsection (a)."; and

3. Ensure that the staff giving notice is properly trained to answer questions and that such information about the impact on Medicare beneficiaries is up-to-date and accurate.

In conclusion, AARP Connecticut supports the objectives of H.B. 5535, Section 1. We will continue to work with you to make additional improvements on the bill and will make ourselves available to you for any additional questions or support on this matter.

If you have any questions please contact, Claudio Gualtieri, AARP Associate State Director of Advocacy at (860)-548-3185 or cgualtieri@arp.org.