

## **“OBSERVATION STATUS” AND ITS IMPACT ON YOU**

In the past several years, Elder Law Attorneys and many Medicare recipients have become very familiar with the problem known as “observation status”. The following scenario illustrates an example of the “observation status” problem: an individual is taken to the hospital where he/she stays for five days. During these five days, the individual receives medical care, medical tests are performed, and medications are prescribed. While the individual assumes and believes he/she has been admitted to the hospital as an inpatient, he/she later discovers that he/she was never admitted to the hospital but has been an outpatient the entire hospitalization.

“Observation status” means that even though an individual is receiving care in a hospital bed, he/she is not classified as a hospital inpatient. Despite the fact the patient received the same nursing and medical care, tests, and medications as other hospital patients, for purposes of Medicare payment, this patient is considered an outpatient. An individual is an inpatient starting the day he/she is formally admitted to the hospital with a doctor’s order.

Since the classification as an inpatient or outpatient affects the amount you pay for hospital services, this is an important distinction. When you are an inpatient in the hospital, Medicare Part A covers inpatient hospital services. In addition, while an inpatient in the hospital, Medicare Part B covers most of your physician services. Unfortunately, the sad reality is that patients who are in “observation status” end up paying higher copayments, medication costs, and nursing home costs than if they had been an inpatient in the hospital.

The classification of inpatient or outpatient plays a critical role in whether Medicare will pay for any care received in a skilled nursing facility. If you need skilled nursing care, Medicare Part A will pay the entire nursing home cost for the first 20 days but only if you have spent at least three full days in a hospital as an admitted inpatient. Medicare Part A can also continue to pay a portion of the nursing home for up to 100 days. However, if your hospital stay was as an outpatient under “observation status”, then you will not qualify for Medicare to pay for your stay in the nursing home. As a result of being classified as an outpatient, this causes serious financial strain on many individuals because they must now pay privately for their nursing home care

when, in most cases, Medicare would have paid part of this expense if they were admitted to the hospital as inpatients and not under “observation status”.

While Medicare’s guidelines state 48-hour plus observation stays should only occur in “rare and exceptional cases”, in recent years, the use of observation care has dramatically increased. The “observation status” problem is a result of Medicare regulations and increased oversight of the hospital; the increased oversight of the hospitals is designed to reduce Medicare expenditures. The problem is twofold: first, Medicare has been informing hospitals that they will be audited if patients have been admitted as inpatients but should have been admitted as outpatients; second, hospitals are concerned about Medicare assessing financial penalties for readmissions. As a result, the hospitals do not admit the patient.

So, if you are a Medicare recipient, the next time you are in the hospital for more than a few hours, you should ask the doctor or the hospital staff if you’re an inpatient or an outpatient. If you have recently experienced the problem of “observation status” firsthand, you should seek the advice of an Elder Law Attorney experienced in this area of law.

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