

September 18, 2023

The Honorable Cathy McMorris Rodgers  
Chair  
Committee on Energy & Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Frank Pallone  
Ranking Member  
Committee on Energy & Commerce  
U.S. House of Representatives  
Washington, DC 20515

**RE: Reintroduction and Passage of the Improving Access to Medicare Coverage Act**

Dear Chair Rodgers and Ranking Member Pallone:

We, the undersigned organizations, representing healthcare providers and Medicare beneficiaries, are writing to voice our support for the reintroduction and passage of the Improving Access to Medicare Coverage Act (H.R. 5138). This legislation will make days spent in observation count towards Medicare's three-day inpatient stay requirement for Skilled Nursing Facility (SNF) coverage.

Time spent under observation does not count towards the three-day inpatient stay requirement for Medicare SNF coverage because observation is considered outpatient care. Originally, observation status was intended to last fewer than 24 hours and rarely spanned beyond 48 hours. However, the incidence and duration of observation stays have increased significantly over the past two decades. Furthermore, observation patients often receive care that is indistinguishable from the care provided to inpatients. Because observation is considered outpatient care, however, the costs of care borne by Medicare beneficiaries are more variable and can be financially disastrous when beneficiaries need post-acute care.

Since Medicare coverage for SNF care is dependent on inpatient stays, patients discharged from observation to SNFs are faced with the decision to pay high, often unexpected bills for their SNF stays or forego necessary follow-up SNF care. The Office of Inspector General (OIG) recognizes the 3-day stay rule creates inconsistencies in coverage for Medicare beneficiaries and regularly cites changing this policy as one of its Top 25 Unimplemented Recommendations.<sup>1</sup> Passage of the Improving Access to Medicare Coverage Act would help address this disparity.

For the last three years under the Public Health Emergency (PHE), Medicare waived the three-day stay rule. This waiver allowed patients to be admitted to SNFs directly, either from the community or following a hospital stay that did not include 3 consecutive inpatient midnights. The waiver demonstrates modifications to the 3-day stay rule will not lead to excessively long or dramatically

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<sup>1</sup> Office of Inspector General. 2021. *OIG's top unimplemented recommendations: Solutions to reduce fraud, waste, and abuse in HHS programs. U.S. Department of Health and Human Services: Office of Inspector General.* <https://oig.hhs.gov/documents/top-unimplemented-recommendations/1097/compendium2021.pdf>

increased number of SNF stays. But now, given the expiration of the COVID-19 PHE on May 11, 2023, Medicare beneficiaries once again face this coverage gap. The Improving Access to Medicare Coverage Act will protect Medicare beneficiaries by eliminating the coverage inequity between beneficiaries who are admitted under observation status and those who have an inpatient stay. We must act now to ensure beneficiaries have the coverage they need and deserve.

Recent data suggests that waiving the three-day stay requirement will not create significant financial burden on the Medicare Trust Fund or lead to prolonged SNF stays. The Center for Medicare and Medicaid Innovation (CMMI) conducted an analysis of SNF-coverage waivers granted to Accountable Care Organizations (ACOs) from 2014-2019.<sup>2</sup> These waivers allowed ACOs to admit a beneficiary to a SNF, either directly from the community or without a qualifying stay in the hospital. The CMMI study shows that waivers granted to ACOs were successful in reducing adverse outcomes, ensuring patients received necessary rehabilitation care, and, in some cases, shortened the length of SNF stays. These findings suggest that allowing days spent under observation to count towards the three-midnight requirement will have minimal impact on the Medicare Trust Fund.

The expiration of the COVID-19 PHE provides us with an opportunity to utilize lessons learned throughout the PHE to better serve our patients. The Improving Access to Medicare Coverage Act will help ensure Medicare beneficiaries receive the care they need and deserve without facing exorbitant and unexpected medical bills. We ask you to support re-introduction of the bill and work towards passing this important legislation.

Sincerely,

AARP

ADVION (formerly National Association for the Support of Long Term Care)

Aging Life Care Association®

Alliance for Retired Americans

AMDA – The Society for Post-Acute and Long-Term Care Medicine

American Association of Healthcare Administrative Management (AAHAM)

American Association of Post-Acute Care Nursing (AAPACN)

American Case Management Association (ACMA)

American College of Emergency Physicians (ACEP)

American College of Physician Advisors (ACPA)

American Geriatrics Society (AGS)

American Health Care Association (AHCA)

American Medical Association

American Physical Therapy Association (APTA)

Association of Jewish Aging Services (AJAS)

Catholic Health Association of the United States (CHA)

Center for Medicare Advocacy

The Hartford Institute for Geriatric Nursing

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<sup>2</sup> Centers for Medicare & Medicaid Innovations. (2023). Skilled nursing facility 3-day waiver: Analysis of use in ACOs 2014-2019. *Centers for Medicare & Medicaid Innovations*. <https://innovation.cms.gov/data-and-reports/2023/snf-waiver-summary>

The Jewish Federations of North America  
Justice in Aging  
LeadingAge  
Lutheran Services in America  
Medicare Rights Center  
National Academy of Elder Law Attorneys, Inc. (NAELA)  
National Association of Benefits and Insurance Professionals (NABIP)  
National Association for State Long-Term Care Ombudsman Programs (NASOP)  
National Center for Assisted Living (NCAL)  
National Committee to Preserve Social Security & Medicare  
The National Consumer Voice for Quality Long-Term Care  
National Council on Aging (NCOA)  
NJHSA – the Network of Jewish Human Service Agencies  
Society of Hospital Medicine (SHM)  
Special Needs Alliance  
USAging