



JUL - 7 2010

Administrator

Washington, DC 20201

Mr. Richard Umbdenstock
President and Chief Executive Officer
American Hospital Association
325 Seventh Street, N.W.
Washington, DC 20004

Dear Mr.  Umbdenstock:

The Centers for Medicare & Medicaid Services (CMS) has become increasingly concerned that Medicare beneficiaries are remaining in observation care for longer periods of time, sometimes exceeding 48 hours. Our claims data indicate a modest trend toward proportionally more observation services extending beyond 48 hours, from approximately 3 percent in 2006 to nearly 6 percent in 2008.

Observation services are defined by Medicare as a set of specific, clinically appropriate hospital outpatient services, which include ongoing short-term treatment, assessment, and reassessment before a decision can be made regarding whether patients require further treatment as hospital inpatients or if they are able to be discharged from the hospital. CMS expects that in the majority of cases, the decision whether to admit a patient for inpatient services or discharge the patient can be made in less than 48 hours, usually in less than 24 hours. Only in rare and exceptional circumstances would it be reasonable and necessary for outpatient observation services to span more than 48 hours.

Observation care of more than 24 hours can have tremendous impact on Medicare beneficiaries. For example, Medicare beneficiaries are liable for approximately 20 percent of the costs of outpatient services that are paid by the Medicare Part B program while the patient is receiving observation, and, in some situations, the full costs of self-administered drugs provided during that time. Further, a beneficiary must stay in the hospital a minimum of 3 days as an inpatient before Medicare will pay for skilled nursing facility care; prolonged outpatient encounters do not count towards this statutory requirement.

As part of our efforts to assist beneficiaries on this issue, CMS developed a pamphlet entitled "Are You a Hospital Inpatient or Outpatient? If You Have Medicare – Ask!" This pamphlet explains in simple-to-understand terminology the difference between a patient's stay in a hospital under Medicare Part A and receipt of outpatient services under Part B and how out-of-pocket liability could change depending upon whether the patient is an outpatient of the hospital or admitted as an inpatient. The publication explains that a beneficiary is not necessarily an inpatient if he or she has stayed in the hospital overnight.

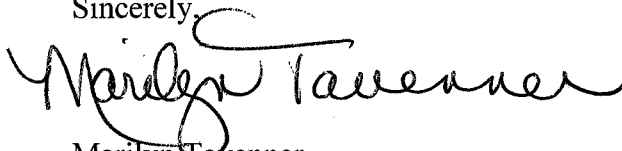
Page 2 – Mr. Richard Umbdenstock

Some have speculated that the recent increase in the duration of observation care is due to hospitals' concerns about post-payment reviews of inpatient claims by Recovery Audit Contractors (RACs). Hospitals may believe that they are at greater risk of a payment recovery in cases where it is not immediately clear whether a patient should be admitted to the hospital as an inpatient or whether they should remain an outpatient. We wish to emphasize that there has been no change in CMS policy for how hospitals should approach such cases. CMS has always required that all services billed to Medicare, including inpatient admissions, be reasonable and necessary.

We are unaware of any policies that would cause a hospital to extend observation care for Medicare patients. As it is not in the hospital's or the beneficiary's interest to extend observation care rather than either releasing the patient from the hospital or admitting the patient as an inpatient, we are interested in learning more about why this trend is occurring and would appreciate any information you can share to better inform further actions CMS can take on this issue.

Thank you for your consideration as we seek to ensure that Medicare beneficiaries receive the best possible care while ensuring the fiscal solvency of the program.

Sincerely,

A handwritten signature in black ink, appearing to read "Marilyn Tavenner". The signature is written in a cursive style with a large, sweeping initial "M".

Marilyn Tavenner

Acting Administrator and Chief Operating Office

Page 3 – Mr. Richard Umbdenstock

cc:

Chip Kahn, Federation of American Hospitals

Darrell G. Kirch, M.D., Association of American Medical Colleges