

LETTER TO EDITOR

The Authors Reply: “Changes to Inpatient Versus Outpatient Hospitalization: Medicare’s 2-Midnight Rule”

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We appreciate Dr. Antonios’ comments regarding our article¹ and agree with his view that there is a need for both a recovery auditor and observation reform. The House of Representatives recently unanimously passed the NOTICE Act (H.R. 876), which would require hospitals to provide verbal and written notification to patients hospitalized as observation for more than 24 hours and obtain a signed record that the patient has received this information.² Also, the law to repeal the Medicare Sustainable Growth Rate (SGR) (Medicare Access and CHIP Reauthorization Act of 2105, P.L. 114-10), signed into law by President Obama in April, 2015, included a provision to delay recovery auditor activity for an additional 6 months, through September 30, 2015.³ Although both of these bills demonstrate that congress is informed about problems with recovery auditors and observation policy, neither beneficiary notification of observation nor a 6-month auditing delay does anything to reform the fundamental problems with observation and the recovery audit program that have resulted in the appeals backlog described by Dr. Antonios.

While we agree that hospitalized beneficiaries should be notified of their visit status, notification alone of outpatient status with observation services, without any enhanced ability of beneficiaries to appeal this determination, or adequate beneficiary education that status determinations are made by clinicians based on Centers for Medicare and Medicaid Services (CMS) regulations, may result in even more confusion

and frustration for beneficiaries and clinicians. We hope that Congress will move forward with improvements in actual observation policy, such as counting observation midnights toward the 3-midnight stay requirement for skilled nursing facility coverage.⁴

Furthermore, as Dr. Antonios points out, the March 2015 victory in a federal circuit court by CGI Federal, Inc., an RAC contractor, over CMS’s new payment terms for recovery audit contracts, which reversed a previous decision and remanded the case to the Court of Federal Claims, will delay CMS’ awarding of the new RAC contracts. This makes the actual effect of the 6-month RAC auditing delay in the SGR bill unclear at this time.⁵ We hope that these current legislative efforts are revisited and will be the beginning, and not the end, of legislative and regulatory reform efforts on these important issues.

References

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