

Medicare: Three Days Of Prior Inpatient Care To Qualify For Skilled Nursing Do Not Include E.R., Observation Time.

The US District Court for the District of Connecticut agreed to make a class-action ruling in a lawsuit challenging the US Department of Health and Human Services's interpretation of what hospital inpatient status means for determining if a Medicare beneficiary has been an inpatient for at least three days before transfer to post-hospital skilled nursing.

Emergency Room, Observation Time Do Not Count

Toward Three Days As Inpatient

In a nutshell, the patients' class-action lawsuit contended that time in the hospital emergency room and under observation pending a decision to admit or to discharge should count toward the three days a patient must spend as a hospital inpatient before Medicare will cover post-hospital skilled nursing services.

Certain medical associations filed legal briefs with the court supporting the patient/plaintiffs' legal position.

The Department of Health and Human Services stood by its interpretation of the word "inpatient" for purposes of the three-day rule. The US District Court for the District of Connecticut has upheld the Department's current interpretation of that term.

Patients who spend time in the hospital emergency department or under observation, but who do not need three full days of actual inpatient hospital care, were not intended by Congress to qualify for Medicare skilled-nursing benefits, in the court's judgment.

The court believed Congress intended for Medicare only to provide benefits for post-hospital skilled nursing care for the more serious cases, that is, only for those cases where the patient had to be in the hospital for at least three days receiving hospital inpatient care. **Landers v. Leavitt, 2006 WL 2560297 (D. Conn., September 1, 2006).**

The US Congress said in the Medicare Act that post-hospital extended care services in a skilled nursing facility are covered only when the beneficiary has been transferred to the skilled nursing facility from a hospital in which the beneficiary was an inpatient for not less than three consecutive calendar days before discharge from the hospital in connection with the transfer.

CMS Medicare Benefit Policy Manual (CMS Pub. 100-2, ch. 1, § 10) contains the Department of Health and Human Services's current interpretation of the term "inpatient."

An inpatient is one who has been admitted to a hospital for bed occupancy for purposes of inpatient hospital services with the expectation he or she will remain at least overnight.

Physicians should use a 24-hour benchmark, that is, they should admit patients who will need care more than 24 hours, and treat the rest as outpatients.

UNITED STATES DISTRICT COURT
CONNECTICUT
September 1, 2006