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NOTICE OF OBSERVATION, TREATMENT, AND IMPLICATION FOR CARE ELIGIBILITY (NOTICE) ACT OF 2015

JULY 30, 2015.—Ordered to be printed

Mr. HATCH, from the Committee on Finance, submitted the following

R E P O R T

[To accompany S. 1349]

The Committee on Finance, to which was referred the bill (S. 1349) to amend title XVIII of the Social Security Act to require hospitals to provide certain notifications to individuals classified by such hospitals under observation status rather than admitted as inpatients of such hospitals, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. LEGISLATIVE BACKGROUND

The Committee on Finance, to which was referred the bill (S. 1349) to amend title XVIII of the Social Security Act to require hospitals to provide certain notifications to individuals classified by such hospitals under observation status rather than admitted as inpatients of such hospitals, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

Background and need for legislative action

On February 11, 2015, Representative Lloyd Doggett (D–TX) and Representative Todd Young (R–IN) introduced H.R. 876, legislation requiring hospitals to notify Medicare beneficiaries, who have been in a hospital for at least 24 hours, if they have been classified by the facility as receiving care under outpatient observation status or if they have been admitted as an inpatient. H.R. 876 was favorably reported by the Committee on Ways and Means on February 26,

2015. On March 16, 2015, H.R. 876 passed the House of Representatives by a vote of 395–0 (Roll Call Vote Number 115).

On March 14, 2015, Senator Benjamin L. Cardin (D–MD) and Senator Michael B. Enzi (R–WY) introduced S. 1349, the Notice of Observation Treatment and Implication for Care Eligibility (NOTICE) Act. S. 1349 is identical to the House-passed bill, H.R. 876. S. 1349 provides Medicare beneficiaries accurate and timely information about their patient status. Prior notice will provide Medicare patients increased certainty regarding their status as an outpatient under observation or as an inpatient admission in the hospital setting. S. 1349 requires a hospital provide Medicare patients the following:

- Explanation for the reason behind a Medicare patient's classification as either outpatient or inpatient;
- Clarification on how a Medicare patient's classification under outpatient status impacts the individual's eligibility for Medicare coverage for certain items and services (such as skilled nursing facility care) as well as the individual's cost-sharing liabilities;
- Name and title of the hospital staff member who delivered the required oral notification to the Medicare patient as well as the date and time of the notification; and
- Requirement that the hospital written notification be signed by the patient to acknowledge receipt. If the patient refuses to sign, then the staff of the hospital who presented the written notification must sign the document indicating that notice was provided.

II. EXPLANATION OF THE BILL

A. Amend title XVIII of the Social Security Act to require hospitals to provide certain notifications to individuals classified by such hospitals under observation status rather than admitted as inpatients of such hospitals.

PRESENT LAW

Under Medicare payment rules, services furnished to beneficiaries as hospital inpatients are generally billed under the Inpatient Prospective Payment System, while services furnished to outpatients are generally billed under the Outpatient Prospective Payment System. Beneficiaries' liability for Medicare cost-sharing can be impacted by whether the beneficiary was admitted as an inpatient or treated on an outpatient basis. In general, Medicare Part A requires beneficiaries to pay an inpatient deductible ($1,260 in CY2015) if they are admitted to the hospital. For beneficiaries who receive hospital outpatient services, beneficiaries typically pay 20 percent of the Medicare reimbursement amount for outpatient items and services after paying the annual Part B deductible ($147 in CY2015). Therefore, beneficiaries who receive several outpatient services could potentially have greater cost-sharing liabilities as an outpatient under observation than if they were admitted as an inpatient to the hospital. In 2012, according to the Health and Human Services Office of Inspector General, for 6 percent of all observation stays, beneficiaries paid more than the inpatient deductible.

In addition, beneficiaries' coverage for Medicare skilled nursing facility (SNF) services depend on whether or not they were admitted to an acute care hospital as an inpatient, or were treated as an outpatient. To receive coverage for SNF services following a beneficiary's hospitalization, the Medicare statute requires that the beneficiary had a qualifying hospital inpatient stay of at least three consecutive days. For purposes of SNF coverage, the time spent under observation does not count towards the requirement of a three-day hospital inpatient stay.

The number of Medicare beneficiaries receiving outpatient observation care over the last several years has been steadily increasing. Some beneficiaries are surprised to learn that although having received treatment overnight in a hospital bed, the beneficiary was never formally admitted as an inpatient but was instead a hospital outpatient. In most cases, beneficiaries who spend 24 hours or more in a hospital as an outpatient are under "observation." Observation care is often characterized as a component of emergency medicine which allows hospitals to triage patients who do not immediately require a hospital inpatient admission but are too sick to immediately discharge. Under observation, the hospital provides assessment, ongoing short-term treatment, and reassessment before determining whether or not the patient should be admitted as an inpatient for additional treatment or the patient is well enough to be discharged from the outpatient department. Current law does not include a specific requirement that hospitals notify Medicare beneficiaries of their patient status.

EXPLANATION OF PROVISION

Beginning one year after the date of enactment, S. 1349 would require hospitals and critical access hospitals (CAHs) to provide a written notification to an individual who has received observation services for more than 24 hours, that explains: (1) the status is outpatient and not inpatient care, and the reasons for such status, (2) the implications of such status for cost-sharing requirements under Medicare and eligibility for SNF care, and (3) other information the Secretary determines appropriate. The written notification is to be provided no later than 36 hours after the time the individual began receiving observation care and must be signed by such individual (or a person acting on the individual's behalf) or by the staff member of the hospital or critical access hospital that provided such notification in cases where the individual refuses to provide a signature. The written notification must be formatted using plain language and made available in appropriate languages as determined by the Secretary. An oral explanation of the written notification must also be provided.

EFFECTIVE DATE

The provision becomes effective 12 months after the date of enactment.

III. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

B. BUDGET AUTHORITY

In compliance with section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93–344), the Committee states that no provisions of the bill as reported involve new or increased budget authority.

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93–344), the Committee advises that the Congressional Budget Office has submitted a statement on the bill. The following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 2015.

Hon. ORRIN G. HATCH,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1349, the Notice of Observation Treatment and Implication for Care Eligibility Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Jamease Kowalcyzk and Kevin McNellis, who can be reached at 226–9010.

Sincerely,

KEITH HALL.

Enclosure.

S. 1349—Notice of Observation Treatment and Implication for Care Eligibility Act As ordered reported by the Senate Committee on Finance on June 24, 2015

S. 1349 would require hospitals to notify Medicare beneficiaries receiving observation services for more than 24 hours of their status as an outpatient under observation. The written notification would have to explain that, because the beneficiary is receiving outpatient—rather than inpatient—services:

- The beneficiary will be subject to cost-sharing requirements that apply to outpatient services, and
- The beneficiary's outpatient stay will not count toward the three-day inpatient stay required for a beneficiary to be eligible for Medicare coverage of subsequent skilled nursing facility services.

Enacting S. 1349 could affect direct spending; therefore, pay-as-you-go procedures apply. CBO expects that some beneficiaries would decide to receive a different set of medical services after

being notified of their observation status than they would under current law. Those decisions could either increase or decrease costs, depending on each beneficiary's particular needs and preferences. However, CBO estimates those effects would not be significant over the 2015–2025 period. Enacting the bill would not affect revenues.

S. 1349 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On March 13, 2015, CBO provided a cost estimate for H.R. 876, as ordered reported by the House Ways and Means Committee on February 26, 2015. The bills are the same, as are the estimated budgetary effects.

The CBO staff contacts for this estimate are Jamease Kowalcyzk and Kevin McNellis. The estimate was approved by Holly Harvey, Deputy Assistant Director for Budget Analysis.

IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority present, the "Notice of Observation, Treatment, and Implication for Care Eligibility (NOTICE) Act" was ordered favorably reported by voice vote on June 24, 2015.

V. REGULATORY IMPACT AND OTHER MATTERS

A. Regulatory Impact

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill.

Impact on individuals and businesses, personal privacy and paperwork

In carrying out the provisions of the bill, there is no expected imposition of additional administrative requirements or regulatory burdens on individuals or businesses. The provisions of the bill do not impact personal privacy.

B. Unfunded Mandates Statement

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4). The Congressional Budget Office estimates the bill would not impose intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

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