

2022 NGS Medicare Spring Virtual Conference Medicare for You

Medicare Outpatient Observation Notice and Related Topics

5/12/2022

Agenda

- Explanation of Medicare Outpatient Observation Notice
- MOON Regulations
- SNF Eligibility
- Observation
- Delivering MOON
- FAQs and Reminders
- Two-Midnight Rule
- Resources and Wrap up
- Questions

Objective

- Hospitals and CAHs should gain an understanding of CMS' MOON including
 - Required use
 - When to issue
 - How to use
 - Ramifications



Today's Presenters

- Provider Outreach and Education Consultants
 - Jean Roberts, RN, BSN, CPC
 - Christine Janiszczak
 - Kathy Windler

Disclaimer

National Government Services, Inc. has produced this material as an informational reference for providers furnishing services in our contract jurisdiction. National Government Services employees, agents, and staff make no representation, warranty, or guarantee that this compilation of Medicare information is error-free and will bear no responsibility or liability for the results or consequences of the use of this material. Although every reasonable effort has been made to assure the accuracy of the information within these pages at the time of publication, the Medicare Program is constantly changing, and it is the responsibility of each provider to remain abreast of the Medicare Program requirements. Any regulations, policies and/or guidelines cited in this publication are subject to change without further notice. Current Medicare regulations can be found on the [CMS website](#).

No Recording

- Attendees/providers are **never** permitted to record (tape record or **any** other method) our educational events
 - This applies to our webinars, teleconferences, live events and any other type of National Government Services educational events

Medicare Outpatient Observation Notice - CMS-10611



What Is the MOON?

- Must use CMS Form CMS-10611
- Informs Medicare beneficiary he/she is
 - An outpatient receiving observation services
 - Not an inpatient/not receiving inpatient services
- Required notice for all hospitals and CAHs

MOON

- Applies to
 - Beneficiaries under original (FFS) Medicare
 - Beneficiaries enrolled in Medicare Advantage
 - Contact specific MAO plan for information
- Assists beneficiary understanding of
 - Medicare benefit limitations and
 - Financial impact of observation status

MOON Regulations

- Mandated by Federal Notice of Observation Treatment and Implication for Care Eligibility Act ([NOTICE Act](#)), passed 8/6/2015
- [Federal Register](#)
- Hospitals are required to issue the current MOON effective 10/1/2016
 - Updated form became effective 4/1/2020

Where Can I Find the MOON?

- MOON (CMS-10611) is available in English and Spanish
 - [FFS & MA MOON](#) or
 - [Beneficiary Notices Initiative \(BNI\)](#)
 - Scroll through chart of various notices to MOON Notice (CMS-10611)
- Instructions
 - [CMS IOM, Publication 100-04, Medicare Claims Processing Manual, Chapter 30](#), Section 400 - Part A Medicare Outpatient Observation Notice

Why Issue the MOON?

- Assists beneficiary in understanding their outpatient observation status
- Allows beneficiary to make informed health care decisions
- Beneficiary will better understand
 - Financial obligations including cost-sharing requirements
 - Lack of eligibility for Medicare coverage of subsequent SNF services/stay

Definition of Observation

- Set of specific, clinically appropriate services which include ongoing short term treatment, assessment and reassessment before a decision can be made regarding whether patients will require further treatment as hospital inpatients or if they are able to be discharged from the hospital
 - [CMS IOM, Publication 100-02, Medicare Benefit Policy Manual, Chapter 6](#), Section 20.6 - Outpatient Observation Services

SNF Eligibility Criteria

- Three-day prior hospitalization
 - The three consecutive day stay requirement can be met by inpatient stays totaling three consecutive days in one or more hospitals
 - The day of admission, but not the day of discharge, is counted as a hospital inpatient day
 - Time spent in observation or in the emergency room prior to admission does not count toward the three day qualifying inpatient hospital stay

SNF Eligibility Criteria

- [CMS IOM, Publication 100-02, Medicare Benefit Policy Manual, Chapter 8](#), Section 20.1 - Three-Day Prior Hospitalization
- MLN[®] Educational Tool: [SNF Billing Reference](#)

Delivering the MOON

- MOON must be provided to beneficiaries receiving observation services as an outpatient
- Trigger: Must deliver when 24 hours of observation services have been provided
- Timing of delivery must be no later than 36 hours after initiation of observation services, or before transfer, outpatient discharge, or inpatient admission
 - Must be
 - Accompanied by an oral explanation of information contained in form
 - Signed by beneficiary or beneficiary's representative

MOON Timing Flexibility

- Timing flexibility to deliver MOON allows hospitals and CAHs to spread out delivery of MOON and other hospital paperwork in an effort to avoid overwhelming and confusing beneficiaries

Reminder

- As with other notices issued to beneficiaries, staff should ensure MOON is understood by beneficiary/ representative
 - Staff should be available to answer questions to ensure patient and family understand the content and meaning of MOON

Observation Start Time

- Observation time
 - **Begins at** clock time documented in patient's medical record, which coincides with time that observation care is initiated in accordance with a physician's order
 - Must be documented in patient's medical records
 - Must have physician's order for observation services

Reminder: Observation Services

- “In the majority of cases, the decision whether to discharge a patient from the hospital following resolution of the reason for the observation care or to admit the patient as an inpatient can be made in less than 48 hours, usually in less than 24 hours. In only rare and exceptional cases do reasonable and necessary outpatient observation services span more than 48 hours.”
- [CMS IOM, Publication 100-02, Medicare Benefit Policy Manual, Chapter 6](#) - Section 20.6 - Outpatient Observation Services, A. Outpatient Observation Services Defined

MOON Format

- Patient name
- Patient number
- Reason patient is an outpatient (not inpatient)
 - Not sufficient to add generic note, such as
 - Your doctor has decided to treat you as an outpatient

Additional Information Field

- Use to add any additional information related to beneficiary such as
 - Notation that a beneficiary refused to sign notice
 - Additional content required under applicable state law related to notice of observation services
 - Contact information for specific hospital departments or staff members
 - Part A cost-sharing responsibilities (coinsurance/deductible)
 - If admitted as inpatient before delivery – date and time of inpatient admission
 - Medicare Accountable Care Organization information
 - Hospital waivers of beneficiary's responsibility for cost of self-administered drugs

State Specific Observation Notices

- Specific state required information may be added to “Additional Information” field of MOON or as an additional page
- Do not alter formatting of official MOON

Oral Notification

- Hospitals and CAHs required to explain MOON and content
 - Must document oral explanation provided
 - Must ensure beneficiary/representative comprehension
 - Staff must be available to answer questions
 - Ensure beneficiary/representative signs and dates MOON
 - Signature ensures MOON was received and contents understood

Appointed versus Authorized Representative

- Appointed Representative – Appointed to act on beneficiary's behalf
 - Beneficiary can appoint a representative using [Appointment of Representative form CMS-1696](#)
- Authorized Representative – Typically authorized under state law to make health care decisions on a beneficiary's behalf such as
 - Legal guardian
 - Someone appointed in accordance with properly executed durable medical power of attorney

Incompetent Beneficiary

- Legally incompetent
 - Notification typically made to an authorized representative of beneficiary

Incompetent Beneficiary

- Temporarily incapacitated/absence of legally binding document
 - Hospital or CAH can determine who could reasonably represent beneficiary for purpose of receiving MOON; such as a family member or close friend
 - Representative must act in beneficiary's best interest and in a manner that is protective of beneficiary, beneficiary's rights and have no relevant conflict of interest with beneficiary
 - Documentation of staff initiating contact, name of person contacted and date/time/method of contact must be documented on MOON

Beneficiary Refusal to Sign

- If possible have a representative sign for beneficiary
- If no representative, form must be signed by staff member who presented MOON and include
 - Date and time notification was issued
 - Staff person's signature, name and title on form as well as certification that MOON was presented
 - Use "Additional Information" section of MOON to include staff member's signature and certification of delivery
 - Date and time of refusal is considered to be date of MOON receipt

MOON Electronic Format

- When using electronic format to obtain signatures, beneficiary has option to request paper format
- Always provide a copy of completed and signed paper version to beneficiary/representative

Exception to In-Person MOON Notification Requirement

- Telephonic notification must include all contents of MOON
- Include in “Additional Information” section
 - Date and time of contact, name of staff person initiating contact, name of representative contacted by phone, date and time of telephone contact and telephone number called
- Hard copy of MOON must be sent to representative by any delivery method that can provide signed verification of delivery
 - When all parties agree, MOON may be faxed/emailed via a method that ensures HIPAA compliance

MOON FAQ

- How should hospitals and CAHs complete the “You’re a hospital outpatient receiving observation services. You are not an inpatient because” free-text field?
 - Language provided in free-text field should be understandable to beneficiary and generally explain that
 - Physician has ordered outpatient observation services in order to evaluate beneficiary’s symptom(s) and diagnosis
 - Beneficiary’s condition and symptoms will continue to be evaluated to assess whether they will need to be admitted as a hospital inpatient or whether they may be transferred or discharged from hospital

MOON FAQ

- Does CMS plan to provide specific language or examples for free-text field?
 - CMS does not plan to provide specific language or examples for free-text field
 - Hospitals and CAHs are responsible for populating free-text field with a clinical rationale specific to each beneficiary's circumstances, based on treating physician's clinical judgment

MOON FAQ

- Are hospitals and CAHs permitted to use pre-populated check boxes for “You’re a hospital outpatient receiving observation services. You are not an inpatient because” free-text field?
 - Yes, hospitals and CAHs may develop and use pre-populated check boxes with common clinical explanations so long as a free-text field is retained for circumstances that do not fit within the prepopulated check boxes

MOON FAQ

- Are psychiatric hospitals subject to the NOTICE Act requirement to deliver the MOON?
 - Yes

MOON FAQ

- Is it permissible to adjust or modify MOON format?
 - Language in MOON has been approved by Office of Management and Budget; therefore, providers may only modify the document text as per CMS guidance (e.g., free text field)
 - Providers also may not change standardized OMB-approved notice formatting, such as moving a signature line from back to front page of MOON or continuing MOON on a third page

Reminders

- When another person signs on behalf of the beneficiary, include
 - Name of staff person initiating contact
 - Name of person contacted
 - Date, time, and method (in person or telephone) of contact

Reminders

- Original completed MOON becomes a part of patient's medical record
 - Proof of delivery must be documented in medical record
 - When not delivered in person, add copy of return receipt (FedEx or U.S. mail) or other proof of delivery
 - Include, when applicable, in response to request for medical records
- Copy of completed, signed MOON is provided to beneficiary/representative
 - Provide even when electronic signature format was used

Reminders

- Failure to provide MOON to applicable beneficiaries when required is considered a violation of hospital's Medicare provider agreement and may result in termination of such agreement
- Issuance of MOON form does not constitute an initial determination nor a denial of coverage
- MOON does not provide appeal rights
 - Medicare Summary Notice communicates appeal rights
- MOON does not limit or restrict appeal rights

FYI: Two-Midnight Rule

- Developed, in part, to address trend of
 - Prolonged outpatient observation
 - Beneficiary financial burden
 - Lack of required three day inpatient hospital stay for Medicare coverage of a SNF inpatient stay
- In general, Two-Midnight rule states
 - Inpatient admissions are generally payable under Part A if admitting practitioner expects patient to require a hospital stay that crosses two midnights and medical record supports that reasonable expectation

FYI: Two-Midnight Rule

- Medicare Part A payment is generally not appropriate for hospital stays not expected to span at least two midnights
- Cases involving a procedure identified on the inpatient-only list or identified as “rare and unusual exception” to the Two-Midnight benchmark by CMS are exceptions to this general rule
 - An inpatient admission may be payable under Medicare Part A on a case-by-case basis based on the judgment of the admitting physician
 - Documentation in medical record must support that an inpatient admission is necessary, and is subject to medical review

FYI: Two-Midnight Rule

- CMS' expectation - It is unlikely for beneficiary to require inpatient hospital admission for a minor surgical procedure or other treatment expected to span a period of time that is only a few hours and does not span at least overnight
- Two-Midnight rule also specifies
 - All treatment decisions for beneficiaries are based on the medical judgment of physicians and other qualified practitioners
 - Two-Midnight rule does not prevent physician from providing any service at any hospital, regardless of expected duration of service

Observation Billing Reminder

- Providers are required to bill observation services correctly and appropriately according to CMS' observation guidelines
 - If a period of observation spans more than one calendar day, all of the hours for the entire period of observation must be included on a single line and the date of service for that line is the date that observation care begins
 - Observation time begins at the clock time documented in the patient's medical record, which coincides with the time that observation care is initiated in accordance with a physician's order

Did You Know?

- Resources specific to billing observation services correctly
 - [CMS IOM, Publication 100-04, Medicare Claims Processing Manual, Chapter 4, Section 290.2.2](#)
 - [NGS Production Alert “Incorrect Billing for Part A Outpatient Observation Services”](#), dated 9/15/2021

Resources and Wrap Up



Resources

- [Beneficiary Notices Initiative \(BNI\)](#)
 - [FFS & MA MOON](#) (CMS-10611)
 - Downloads section
 - Zip file: CMS-10611 (MOON) Form- English and Spanish (Incl Large Print) (ZIP)
 - MOON FAQs (DOCX)
- CMS email for questions concerning any FFS BNI Notice, MAO plan notices, and MOON
 - Can be submitted at: <https://appeals.lmi.org>

Resources

- [CMS Beneficiary Notices Initiative \(BNI\)](#) on CMS' website provides manual instructions that contain more specific detail on various required notices
- MLN Matters® [MM9935 Revised: Medicare Outpatient Observation Notice \(MOON\) Instructions](#) and [Change Request 9935 - Medicare Outpatient Observation Notice \(MOON\) Instructions](#)

Resources

- CMS IOM, Publication 100-02, *Medicare Benefit Policy Manual*
 - [Chapter 1](#), Section 10 - Covered Inpatient Hospital Services Covered Under Part A
 - [Chapter 6](#), Section 20.6 - Outpatient Observation Services

Resources

- CMS IOM, Publication 100-04, *Medicare Claims Processing Manual*
 - [Chapter 4](#), Section 290 - Outpatient Observation Services
 - [Chapter 29](#), Section 270 - Appointment of Representative
 - [Chapter 30](#), Section 400 - Part A Medicare Outpatient Observation Notice

Resources

- [CMS Fact Sheet: Two-Midnight Rule \(10/30/2015\)](#)
- [Change Request 10080 - Clarifying Medical Review of Hospital Claims for Part A Payment](#)
 - MLN Matters® [MM10080 Revised: Clarifying Medical Review of Hospital Claims for Part A Payment](#)
- [Hospital Inpatient Admission Order and Certification](#)

NGS Medicare University Course

- [NGS Medicare University](#) includes an interactive computer-based training module
 - PTA-C-0051 - MOON Notice
 - This course will assist you in gaining an understanding of the new CMS MOON process including when and how to issue it
- NGS [Medicare University User Guide](#)
 - Learn how to create, use your account, and earn credit!

FYI-COVID and SNF Three-Day Qualifying Stay

- [COVID-19 Frequently Asked Questions \(FAQs\) on Medicare Fee-for-Service \(FFS\) Billing](#)
 - ASC that becomes a hospital during COVID PHE is subject to all Medicare payment policies and limitations to the extent not waived (e.g., Two-Midnight rule and MOON)
 - Section II. Ambulatory Surgical Centers (ASC) - QA #7
 - SNF waiver of three-day qualifying stay requirement is limited
 - Section Y. Skilled Nursing Facility Services
 - MLN Matters® [Special Edition Article SE20018: COVID-19 Blanket Swing Bed Waiver for Addressing Barriers to Nursing Home Placement for Hospitalized Individuals](#)

Thank You!

- Follow-up email
 - Attendees will be provided a Medicare University Course Code
- Questions?

