

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

---

**BILL:** CS/SB 768

**INTRODUCER:** Health Policy Committee and Senator Gaetz

**SUBJECT:** Patient Observation Status Notification

**DATE:** March 23, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Fav/CS</b>
2.	Hendon	Hendon	CF	<b>Pre-meeting</b>
3.			FP	

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 768 requires a hospital to document the placement of a patient on observation status in that patient's discharge papers. The bill requires that the patient or his or her proxy be notified of the observation status through the discharge papers and allows the facility to also notify the patient through brochures, signage, or other forms of communication. Such notification is important as an elderly person who is not admitted is unlikely to have any subsequent stay in a nursing home paid under Medicare.

The bill is not expected to have a fiscal impact on the state and has an effective date of July 1, 2015.

**II. Present Situation:**

**Observation Status**

Observation services are services provided in a hospital in order to help the treating physician decide whether the patient needs to be admitted to the hospital or if the patient can be discharged.

These services can occur in the hospital's emergency department or in another area of the hospital.<sup>1</sup>

The physician or other practitioner responsible for a patient's care at the hospital is also responsible for deciding whether the patient should be admitted as an inpatient. Although generally a physician should order a patient admitted who is expected to spend 24 hours or more in the hospital, such a decision is a complex medical judgment which the physician should only make after considering a number of factors including:

- The severity of signs and symptoms exhibited by the patient;
- The medical probability of something adverse happening to the patient;
- The need for diagnostic studies to assist in the admitting decision; and
- The availability of diagnostic procedures at the time when the patient presents.<sup>2</sup>

Observation services are considered outpatient services even if the patient spends one or more nights in the hospital. Outpatient services are covered under Medicare Part B, rather than Part A, so some patients with Medicare can see increased out of pocket costs for observation services versus being admitted to the hospital.<sup>3</sup> For example, hospital inpatient services are covered under Medicare Part A which requires the patient to pay a one-time deductible (\$1,260) for all hospital services for the first 60 days of his or her stay. However, hospital outpatient services, including observation services, are covered under Medicare Part B and the patient must pay the Part B deductible (\$147) as well as 20 percent of the Medicare-approved amount for doctor services.<sup>4</sup> Also, a patient may be responsible for the costs of a skilled nursing facility stay once discharged from the hospital and any prescription drug costs which typically are not covered under Medicare Part B.<sup>5</sup>

According to a study published in 2014, between 2001 and 2009, the rate of hospitals' use of observation services for Medicare patients has approximately doubled. In addition, the number of Medicare patients who were placed on observation status and then released without being admitted to the hospital has increased by 131 percent over the same time period.<sup>6</sup> The federal Centers for Medicare and Medicaid Services (CMS) also noted an increase in the percentage of hospital patients receiving observation services for longer than 48 hours from approximately 3 percent in 2006 to approximately 8 percent in 2011.<sup>7</sup> This trend concerns CMS since "beneficiaries who are treated for extended periods of time as hospital outpatients receiving

---

<sup>1</sup> U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Product No. 11435, *Are You a Hospital Inpatient or Outpatient? If You Have Medicare – Ask!* (May 2014) <https://www.medicare.gov/Pubs/pdf/11435.pdf> (Last visited Feb. 23, 2015).

<sup>2</sup> Medicare Benefit Policy Manual, Chapter 1 at 10, available at <http://cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c01.pdf> (last visited March 6, 2015).

<sup>3</sup> AARP Public Policy Institute, *Rapid Growth in Medicare Hospital Observation Services: What's Going On?*, p. 1 (September 2013) [http://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/health/2013/rapid-growth-in-medicare-hospital-observation-services-AARP-ppi-health.pdf](http://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/2013/rapid-growth-in-medicare-hospital-observation-services-AARP-ppi-health.pdf) (Last visited Feb. 23, 2015.)

<sup>4</sup> See supra note, at 1, and Medicaid.gov., *Medicare 2015 costs at a glance* <http://www.medicare.gov/your-medicare-costs/costs-at-a-glance/costs-at-a-glance.html> (Last visited Feb. 23, 2015).

<sup>5</sup> Note: Some Medicare beneficiaries purchase separate Medicare Part D coverage for prescription drugs.

<sup>6</sup> Supra note 3, at 6.

<sup>7</sup> Fed. Reg., Vol. 78, No. 160, pp. 50495-50907 (August 19, 2013) <http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-18956.pdf> (last visited Feb. 25, 2015).

observation services may incur greater financial liability...[from] Medicare Part B copayments, the cost of self-administered drugs that are not covered under Part B, and the cost of post hospital skilled nursing facility care.”<sup>8</sup>

Part of the cause of the upward trend in longer periods on observation status may be due to hospitals’ wariness of the denial of their Medicare Part A inpatient claims due to a Medicare review contractor determining that the inpatient admission was not reasonable and necessary. To combat this, CMS, enacted the 48 hour benchmark which is guidance that states that “the decision to admit a beneficiary should be made within 24 to 48 hours of observation care [and that] only in rare and exceptional cases do reasonable and necessary outpatient observation services in the hospital span more than 48 hours.”<sup>9</sup> In addition, starting April 1, 2015,<sup>10</sup> Medicare’s review contractors are required to presume as reasonable and necessary admissions for patients that are expected to require more than one Medicare utilization day (defined as spanning two midnights).<sup>11</sup>

Once a person is discharged from a hospital, they often need additional time to rehabilitate in a nursing home prior to returning home. When a person is admitted and has a three night stay in a hospital and needs rehabilitative care, Medicare will pay for up to 60 days in a skilled nursing home.<sup>12</sup> If a person is not admitted to the hospital and subsequently goes into a nursing home, Medicare will not pay for the nursing home stay.

### III. Effect of Proposed Changes:

**Section 1** amends s. 395.301, F.S., to require a hospital<sup>13</sup> to document the placement of a patient on observation status in that patient’s discharge papers. The bill requires that the patient or his or her proxy be notified of the observation status through the discharge papers and allows the facility to also notify the patient through brochures, signage, or other forms of communication. A greater awareness among patients and their families will allow better planning for paying for the cost of any subsequent rehabilitative care in a nursing home.

**Section 2** provides an effective date of July 1, 2015.

---

<sup>8</sup> Id. Note: For skilled nursing facility care to be covered under Medicare Part A the patient must have a prior 3-day stay in the hospital as an inpatient.

<sup>9</sup> Id.

<sup>10</sup> See Amanda Cassidy, *The Two-Midnight Rule*, Health Affairs, Health Policy Briefs (January 22, 2015) available at [http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief\\_id=133](http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=133), (last visited Feb. 25, 2015).

<sup>11</sup> Supra note 10, at 50908

<sup>12</sup> See official Medicare website, <http://www.medicare.gov/coverage/skilled-nursing-facility-care.html>, (last visited March 23, 2015).

<sup>13</sup> The bill refers to any licensed facility which also includes ambulatory surgical centers and mobile surgical facilities. However, patients are not permitted to stay overnight in either of those facility types and, therefore, it is unlikely the provisions in this bill would affect such facilities.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

CS/SB 768 may provide a positive fiscal impact for some patients who are placed on observation status in a hospital if such placement would require that they pay high out of pocket costs for outpatient services not covered by their insurance and if through receiving the notification the patient can avoid such costs.

The bill may cause a negative fiscal impact for facilities that fail to document observation status in a patient's discharge papers since failing to do so would constitute a licensure violation for that facility.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 395.301 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Health Policy on March 10, 2015:**

The CS removes the requirement that a hospital, ambulatory surgical center, or mobile surgical facility provide written and oral notification immediately to a patient when that patient is placed on observation status, as well as the details required to be in such a notification. The CS adds a requirement that a hospital, ambulatory surgical center, or mobile surgical facility document observation services in a patient's discharge papers and that the patient, or his or her proxy, must be notified of the observation services through such documentation. The CS also allows the facility to notify the patient through brochures, signage, or other forms of communication.

- B. **Amendments:**

None.