HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 813 Hospital Observation Status
SPONSOR(S): Health Market Reform Subcommittee, Tomkow
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Market Reform Subcommittee	15 Y, 0 N	Royal	Crosier
2) Health & Human Services Committee	16 Y, 0 N	Royal	Calamas

SUMMARY ANALYSIS

When a patient enters a hospital, a physician must decide whether or not to admit the individual for inpatient care. The term "observation status" means a hospital patient who is currently considered an outpatient, but is receiving observation services to determine if admission as an inpatient is necessary. During an observation stay in a hospital, a treating physician may order a variety of outpatient services, including laboratory tests, medication, minor procedures, x-rays, and other imaging services.

A patient on "observation status" may experience higher costs than a patient on admission status for time spent in a hospital because Medicare covers inpatient and outpatient hospital services differently. A patient under "observation status" in a hospital does not meet the requirements for a qualifying inpatient hospital stay for Medicare coverage for SNF care.

Florida law requires hospitals to notify patients of their observation status through documentation in the patient's discharge papers, that is when leaving the hospital. Federal law requires hospitals to provide a notice to patients when observation status services last more than 24 hours, but before 36 hours. The hospital must provide the notice to the patient if the patient is discharged, transferred or admitted before 36 hours.

The bill requires hospitals provide patients written notice of their observation status immediately when patients are placed upon observation status. The bill requires Medicare patients receive the notice through the Medicare Outpatient Observation Notice form and non-Medicare patients through a form adopted by rule of the Agency for Health Care Administration.

The bill does not have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Hospital Billing Transparency

Hospitals are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 395, F.S.[1] Current law requires hospitals to notify each patient, upon admission and discharge, of the right to receive an itemized bill. Upon request, the hospital must provide the patient an itemized statement detailing the specific nature of the charges or expenses incurred by the patient.[2]

A hospital must also give a patient, prior to providing any non-emergent medical services, within 7 days of a written request, a good faith estimate of reasonably anticipated charges for the facility to treat the patient's condition.[3] Upon request, the hospital must also provide revisions to the estimate.[4] A facility that fails to provide the estimate may be fined $500 for each instance of the facility's failure to provide the requested information.[5]

Patient Status

When a patient enters a hospital, a physician must decide whether or not to admit the individual for inpatient care. Factors to be considered when making a decision to admit a patient include:

- The severity of the signs and symptoms exhibited by the patient;
- The medical predictability of an adverse event;
- The need for diagnostic studies to access whether the patient should be admitted;
- The availability of diagnostic procedures at the time when, and at the location where, the patient presents; and
- Whether the patient is expected to need at least 24 hours of hospital care.[6]

A patient in "observation status" in a hospital is considered an outpatient and receives observation services to determine if admission is necessary.[7] Observation services are commonly ordered for a patient who presents to the emergency department and requires a period of treatment or monitoring in order to make a decision between admission and discharge.[8] Outpatient services can include laboratory tests, medication, minor procedures, x-rays, and other imaging services. Observation stays can occur anywhere in the hospital, including the emergency department, a separate observation unit, or an inpatient unit.

The federal Medicare program does not expressly limit the number of days a patient may be on "observation status," but assumes the decision whether to admit or discharge a patient from the hospital can often be made in less than 48 hours; only in rare cases are outpatient observation services required beyond 48 hours.[9]

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[1] S. 395.002(16), F.S., defines "licensed facility" as a hospital, ambulatory surgical center, or mobile surgical facility licensed in accordance with ch. 395, F.S. The bill applies to all three facility types because it amends part I of ch. 395, F.S., but will only affect hospitals because ambulatory surgical centers and mobile surgical facilities serve patients who are receiving elective outpatient services and know in advance that they are not going to be admitted to a hospital, barring any complications.
[2] S. 395.301(1), F.S.
[3] S. 395.301(7), F.S.
[4] Id.
[5] Id.
[6] Centers for Medicare and Medicaid Services (CMS), *Medicare Benefit Policy Manual* (MBPM), ch. 1, § 10.
[7] Id. at ch. 6, § 20.6.
[8] Id.
[9] Id.

Section 1862(a)(1)(A) of the federal Social Security Act limits Medicare payments to the provision of services that are reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body.[10] Hospital care that is custodial, rendered for social purposes or reasons of convenience and not required for the diagnosis or treatment of illness or injury, is excluded from Medicare Part A payment.[11] A patient on "observation status" may experience higher costs than a patient on admission status for time spent in a hospital because Medicare covers inpatient and outpatient hospital services differently.

The federal Medicare fee-for-service program provides hospital insurance (Medicare Part A) and supplementary medical insurance (Medicare Part B) to eligible beneficiaries.[12] Patient liability under Medicare Part B includes not only copayments (20% of the Medicare payment amount for outpatient items and services after paying an annual Part B deductible), but also may include the cost of self-administered drugs that are not covered under Part B as well as the cost of any necessary post-hospitalization skilled nursing facility care, which requires a three-day inpatient hospital admission prior to Part A coverage.[13] Medicare Part A covers inpatient hospital services, which requires a one-time deductible covering all hospital services for the first 60 days a patient is in the hospital. A patient on "observation status" is covered under Medicare Part B, which covers outpatient hospital services and requires the patient to pay a 20-percent copayment for each individual outpatient hospital service.[14]

In addition, a patient's hospital status may affect their Medicare coverage for care in a skilled nursing facility (SNF). The patient must have a qualifying inpatient hospital stay, defined as three consecutive days of inpatient care, to be covered by Medicare for SNF care.[15] A patient who qualifies for Medicare and Medicaid will not be responsible for the copayment.[16] A patient under "observation status" in a hospital does not meet the requirements for a qualifying inpatient hospital stay for Medicare coverage for SNF care.

Patient Notification of Observation Status

The Federal Notice of Observation Treatment and Implication for Care Eligibility Act, passed on August 6, 2015, requires hospitals to provide the Medicare Outpatient Observation Notice to patients when observation status services last more than 24 hours.[17] The notice must be provided to the patient if the patient is discharged, transferred or admitted before 36 hours. The notice informs patients that observation status may affect their health care costs.

Florida law requires hospitals to notify patients or a patient's proxy of their observation status through documentation in the patient's discharge papers, that is when leaving the hospital.[18] The documentation may include brochures, signage, or other forms of communication. The documentation is not required to inform patients that observation status may affect their health care costs.

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[10] Centers for Medicare and Medicaid Services*, Frequently Asked Questions*, available at: https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medical-Review/Downloads/QAsforWebsitePosting_110413-v2-CLEAN.pdf (last viewed March 5, 2019).
[11] *Id.*
[12] Jessica Gustafson and Abby Pendleton, *Be On Notice: CMS's Proposed Rule on the Notice Act Has Been Published,* American Bar Association Health Law Section, Health eSource (June 2015-2016) on file with the Health and Human Services Committee.
[13] *Id* at page 2.
[14] 42 CFR § 419.40(b)
[15] 42 CFR § 409.30
[16] 42 CFR § 440.20 Outpatient hospital services are a mandatory Medicaid benefit. For services that both Medicare and Medicaid cover, Medicare pays first, and Medicaid pays second by covering an individual's remaining costs for Medicare coinsurances and copayments.
[17] Centers for Medicare and Medicaid Services, Medicare Outpatient Observation Status, available at: https://www.cms.gov/Medicare/Medicare-General-Information/BNI/MOON.html (last viewed March 5, 2019).
[18] s. 395.301, F.S.

Effect of Proposed Changes

The bill removes the requirement that a hospital notify a patient or patient's proxy through the patient's discharge papers that the patient was placed on observation status. The bill requires hospitals to immediately provide written notification to patients of their observation status. The bill requires the notice be given to Medicare patients through the Medicare Outpatient Observation Notice form and to non-Medicare patients through a form adopted by rule of the Agency for Health Care Administration (AHCA).

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 395.301, F.S., relating to price transparency; itemized patient statement or bill; patient admission status notification.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal goverments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2019, the Health Market Reform Subcommittee adopted an amendment and reported HB 813 favorably as amended. The amendment:

- Requires hospitals provide Medicare patients notice of their observation status through the Medicare Outpatient Observation Notice form.
- Requires hospitals to provide non-Medicare patients notice of their observation status through a form created by AHCA rule.

The analysis is drafted to the bill as amended by the Health Market Reform Subcommittee.