NOTIFICATION OF OBSERVATION SERVICES

The U.S. House of Representatives recently passed H.R. 876. It now is pending in the Senate. The bill directs hospitals to provide notice to patients when they are receiving observation services rather than being formally admitted to the hospital for inpatient care. The notice would include an explanation of the status, implications of such status and must be signed by the patient or his or her legal representative.

The Missouri General Assembly is considering similar legislation. While acknowledging that the problems their constituents are experiencing are caused by federal policy, state legislators feel compelled to ensure that patients are aware of the potential implications of receiving observation services.

H.R. 876 does ensure patient notification. However, it does little or nothing to revise the flawed system that is causing the problems for Medicare enrollees and health care providers. It focuses on the symptoms of the disease, not the cause.

Since Medicare pays more for services in an inpatient setting than for outpatient observation services, Medicare Recovery Audit Contractors have focused on challenging the patient status determinations of hospitals and their medical staff. Based on the high rate of success in successfully overturning RAC denials on appeal, RACs often overreach in their interpretations about patient status assignments. The overaggressive nature of the RAC audits has led hospitals to become extremely cautious in assigning patients to an inpatient status. A RAC denial can tie up funds for years because of the backlog in processing appeals and also puts the entire payment at risk. To avoid this, hospitals are compelled to increase the use of outpatient observations services, which pay less but are less likely to be challenged by a RAC.

CMS responded to the concerns about patient status determinations by creating a new standard known as the “two midnight” rule. The “two midnight” rule has generated its own controversies and its enforcement has been temporarily suspended for RACs. What has become clear is the need to rely on physician judgement to determine patient status for those who are receiving overnight care in the hospital for less than two midnights.

The Missouri Hospital Association understands the impetus for legislation to compel patient notification of outpatient observation services. However, it urges the congressional delegation to focus on the reasons the legislation has become necessary — the governmental incentives and disincentives embedded in its process of making and challenging Medicare payments to hospitals.