



## Skilled Nursing Facilities: Compliance with the Medicare 3-Day Billing Rule

By Janet K. Feldkamp and Christine Pokryfky

The Office of Inspector General (OIG) recently released a report after identifying that Medicare had been improperly paying for Skilled Nursing Facility (SNF) care for beneficiaries who had not met the Medicare 3-Day inpatient hospital stay requirement.

The law, at §1861(i) of the Social Security Act and the relating regulations in [Title 42 of the Code of Federal Regulations \(CFR\) § 409.30](#) stipulate that for Medicare to cover SNF services, that the beneficiary must first, “have been hospitalized in a participating or qualified hospital for medically necessary inpatient hospital care, for **at least 3 consecutive calendar days**, not counting the date of discharge.”

- Hospitals should openly communicate to SNFs and beneficiaries the number of days that each patient was an admitted inpatient in the hospital, and in turn, SNFs should verify each beneficiary has had the required 3-day admitted inpatient hospitalization prior to accepting the patient for Facility admission.
- Inappropriate Medicare reimbursement may take place when a hospital discharges an inpatient Medicare beneficiary before the patient has met the 3-day rule criteria. It is important to note that patients who are on observation or in extended recovery, are not admitted hospital inpatients, and thus do not qualify for SNF services under the 3-day rule.

- Medicare will not reimburse for services in a SNF when coverage is denied because there was no 3-day hospital inpatient stay. While Medicare limits financial liability of beneficiaries for some denials, these limitations do not apply when SNF services are not covered due to the lack of a qualifying 3-day inpatient stay.
- When Medicare contractors make an inappropriate or erroneous payment for SNF services due to a beneficiary not having had the qualifying 3-day inpatient hospital stay, per §1870 of the Social Security Act, the contractor may assess an overpayment and recover the payment after determining whether or not the beneficiary or provider were at fault for the overpayment.

It is imperative that Facilities ensure compliance with the Medicare 3-Day Rule to avoid overpayment, and to prevent submitting claims that are incorrect.

For more information on these requirements, please refer to the Medicare Learning Network Fact Sheet on Skilled Nursing Facility 3-Day Rule Billing.

Benesch will continue to stay up to date with respect to these requirements, for more information, please contact a member of Benesch’s Health Care & Life Sciences Practice Group.



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