

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services



MLN Matters® Number: MM9935 **Revised**      Related Change Request (CR) #: CR 9935

Related CR Release Date: January 27, 2017      Effective Date: February 21, 2017

Related CR Transmittal #: R3698CP      Implementation Date: February 21, 2017

### Medicare Outpatient Observation Notice (MOON) Instructions

**Note: This article was revised on February 2, 2017 to reflect a revised CR9935 issued on January 27. In the article, the CR release date, transmittal number, and the Web address for accessing the CR were revised. All other information remains the same.**

#### Provider Types Affected

This MLN Matters® Article is intended for hospitals, including Critical Access Hospitals (CAHs) submitting claims to Medicare Administrative Contractors (MACs) for outpatient observation services provided to Medicare beneficiaries.

#### Provider Action Needed

Change Request (CR) 9935 updates Chapter 30 of the “Medicare Claims Processing Manual” to include the Medicare Outpatient Observation Notice (MOON), CMS-10611, and related instructions. Providers should use the MOON to inform Medicare beneficiaries when they are an outpatient receiving observation services, and are not an inpatient of the hospital or a Critical Access Hospital (CAH). The instructions included in Chapter 30 provide guidance for proper issuance of the MOON. The updated Chapter 30 is attached to CR9935.

#### Background

The MOON is mandated by the Federal Notice of Observation Treatment and Implication for Care Eligibility Act (NOTICE Act), passed on August 6, 2015. This law amended Section 1866(a)(1) of the Social Security Act by adding new subparagraph (Y) that requires hospitals and CAHs to provide written notification and an oral explanation of such

#### Disclaimer

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents. CPT only copyright 2015 American Medical Association. All rights reserved.

notification to individuals receiving observation services as outpatients for more than 24 hours at the hospitals or CAHs.

### **Scope**

Hospitals and CAHs must provide the MOON to beneficiaries in Original Medicare (Fee-For-Service) who receive observation services as outpatients for more than 24 hours. (**Note:** MA plans are to follow MOON instructions outlined in CR9935/Section 400 of Chapter 30 of the Medicare Claims Processing Manual.

All beneficiaries receiving services in hospitals and CAHs must receive a MOON no later than 36 hours after observation services as an outpatient begin. For purposes of these instructions, the term “beneficiary,” means either beneficiary or representative, when a representative is acting for a beneficiary.

This also includes beneficiaries in the following circumstances:

- Beneficiaries who do not have Part B coverage
- Beneficiaries who are subsequently admitted as an inpatient prior to the required delivery of the MOON
- Beneficiaries for whom Medicare is either the primary or secondary payer

The statute expressly provides that the MOON be delivered to beneficiaries receiving observation services as an outpatient for more than 24 hours. In other words, the MOON should not be delivered to all beneficiaries receiving outpatient services. The MOON is intended to inform beneficiaries who receive observation services for more than 24 hours that they are outpatients receiving observation services and not inpatients, and the reasons for such status, and must be delivered no later than 36 hours after observation services begin.

However, hospitals and CAHs may deliver the MOON to an individual receiving observation services as an outpatient before such individual has received more than 24 hours of observation services. Allowing delivery of the MOON before an individual has received 24 hours of observation services affords hospitals and CAHs the flexibility to deliver the MOON consistent with any applicable State law that requires notice to outpatients receiving observation services within 24 hours after observation services begin. The flexibility to deliver the MOON any time up to, but no later than, 36 hours after observation services begin also allows hospitals and CAHs to spread out the delivery of the notice and other hospital paperwork in an effort to avoid overwhelming and confusing beneficiaries.

### **Hospitals Affected by These Instructions**

These instructions apply to hospitals as well as CAHs per Section 1861(e) and Section 1861(mm) of the Social Security Act.

### **Medicare Outpatient Observation Notice**

The MOON is subject to the Paperwork Reduction Act (PRA) process and approved by the Office of Management and Budget (OMB). OMB-approved notices may only be modified

#### **Disclaimer**

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents. CPT only copyright 2015 American Medical Association. All rights reserved.

as per their accompanying form instructions, as well as per guidance in this section of the manual. Unapproved modifications cannot be made to the OMB-approved, standardized MOON. The notice and accompanying form instructions are available at <http://www.cms.gov/Medicare/Medicare-General-Information/BNI>.

### **Alterations to the Notice**

In general, the MOON must remain two pages, except as needed for the additional information field discussed below or to include State-specific information below. Hospitals and CAHs subject to State law observation notice requirements may attach an additional page to the MOON to supplement the “Additional Information” section in order to communicate additional content required under State law, or may attach the notice required under State law to the MOON. The pages of the notice can be two sides of one page or one side of separate pages, but **must not** be condensed to one page.

Hospitals may include their business logo and contact information on the top of the MOON. Text may not be shifted from page 1 to page 2 to accommodate large logos, address headers, or any other information.

### **Completing the MOON**

Hospitals must use the OMB-approved MOON (CMS-10611). Hospitals must type or write the following information in the corresponding blanks of the MOON:

- Patient name
- Patient number
- Reason patient is an outpatient

### **Hospital Delivery of the MOON**

Hospitals and CAHs must provide both the standardized written MOON, as well as oral notification. Oral notification must consist of an explanation of the standardized written MOON. The format of such oral notification is at the discretion of the hospital or CAH, and may include, but is not limited to, a video format. However, a staff person must always be available to answer questions related to the MOON, both in its written and oral delivery formats.

The hospital or CAH must ensure that the beneficiary or representative signs and dates the MOON to demonstrate that the beneficiary or representative received the notice and understands its contents. Use of assistive devices may be used to obtain a signature.

Electronic issuance of the MOON is permitted. If a hospital or CAH elects to issue a MOON viewed on an electronic screen before signing, the beneficiary must be given the option of requesting paper issuance over electronic issuance if that is what the beneficiary prefers. Regardless of whether a paper or electronic version is issued and regardless of whether the signature is digitally captured or manually penned, the beneficiary must be given a paper copy of the MOON with the required beneficiary specific information inserted, at the time of notice delivery.

#### **Disclaimer**

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents. CPT only copyright 2015 American Medical Association. All rights reserved.

## Refusal to Sign the MOON

If the beneficiary refuses to sign the MOON, and there is no representative to sign on behalf of the beneficiary, the notice must be signed by the staff member of the hospital/CAH who presented the written notification. The staff member's signature must include the name and title of the staff member, a certification that the notification was presented, and the date and time the notification was presented. The staff member annotates the "Additional Information" section of the MOON to include the staff member's signature and certification of delivery. The date and time of refusal is considered to be the date of notice receipt.

## MOON Delivery to Representatives

The MOON may be delivered to a beneficiary's appointed representative. A beneficiary may designate an appointed representative via the "Appointment of Representative" form, the CMS-1696, which can be found at <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms1696.pdf>. See Chapter 29, Section 270.1 of the "Medicare Claims Processing Manual" at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c29.pdf> for more information on appointed representatives.

The MOON may also be delivered to an authorized representative. Generally, an authorized representative is an individual who, under State or other applicable law, may make health care decisions on a beneficiary's behalf (for example, the beneficiary's legal guardian, or someone appointed in accordance with a properly executed durable medical power of attorney).

Notification to a beneficiary who has been deemed legally incompetent is typically made to an authorized representative of the beneficiary. However, if a beneficiary is temporarily incapacitated, a person (typically, a family member or close friend) whom the hospital or CAH has determined could reasonably represent the beneficiary, but who has not been named in any legally binding document, may be a representative for the purpose of receiving the MOON. Such a representative should act in the beneficiary's best interests and in a manner that is protective of the beneficiary and the beneficiary's rights. Therefore, a representative should have no relevant conflict of interest with the beneficiary.

In instances where the notice is delivered to a representative who has not been named in a legally binding document, the hospital or CAH should annotate the MOON with the name of the staff person initiating the contact, the name of the person contacted, and the date, time, and method (in person or telephone) of the contact.

**Note:** There is an exception to the in-person notice delivery requirement. If the MOON must be delivered to a representative who is not physically present to receive delivery of the notice, the hospital/CAH is not required to make an off-site delivery to the representative. The hospital/CAH must complete the MOON as required and telephone the representative.

- The information provided telephonically should include all contents of the MOON.

### Disclaimer

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents. CPT only copyright 2015 American Medical Association. All rights reserved.

- Note the date and time the hospital or CAH communicates (or makes a good faith attempt to communicate) this information telephonically to the representative is considered the receipt date of the MOON.
- Annotate the “Additional Information” section to reflect that all of the information indicated above was communicated to the representative.
- Annotate the “Additional Information” section with the name of the staff person initiating the contact, the name of the representative contacted by phone, the date and time of the telephone contact, and the telephone number called.

A copy of the annotated MOON should be mailed to the representative the day telephone contact is made.

A hard copy of the MOON must be sent to the representative by certified mail, return receipt requested, or any other delivery method that can provide signed verification of delivery (for example: FedEx or UPS). The burden is on the hospital or CAH to demonstrate that timely contact was attempted with the representative and that the notice was delivered.

If the hospital or CAH and the representative both agree, the hospital or CAH may send the notice by fax or e-mail; however, the hospital or CAH’s fax and e-mail systems must meet the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security requirements.

### **Ensuring Beneficiary Comprehension**

The OMB-approved standardized MOON is available in English and Spanish. If the individual receiving the notice is unable to read its written contents and/or comprehend the required oral explanation, hospitals and CAHs must employ their usual procedures to ensure notice comprehension. Usual procedures may include, but are not limited to, the use of translators, interpreters, and assistive technologies.

Hospitals and CAHs are reminded that recipients of Federal financial assistance have an independent obligation to provide language assistance services to individuals with Limited English Proficiency (LEP) consistent with Section 1557 of the Affordable Care Act and Title VI of the Civil Rights Act of 1964. In addition, recipients of Federal financial assistance have an independent obligation to provide auxiliary aids and services to individuals with disabilities free of charge, consistent with Section 1557 of the Affordable Care Act and Section 504 of the Rehabilitation Act of 1973.

### **Completing the Additional Information Field of the MOON**

This section may be populated with any additional information a hospital wishes to convey to a beneficiary. Such information may include, but is not limited to:

- Contact information for specific hospital departments or staff members
- Additional content required under applicable State law related to notice of observation services

#### **Disclaimer**

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents. CPT only copyright 2015 American Medical Association. All rights reserved.

- Part A cost-sharing responsibilities if a beneficiary is admitted as an inpatient before 36 hours following initiation of observation services
- The date and time of the inpatient admission if a patient is admitted as an inpatient prior to delivery of the MOON
- Medicare Accountable Care Organization information
- Hospital waivers of the beneficiary's responsibility for the cost of self-administered drugs
- Any other information pertaining to the unique circumstances regarding the particular beneficiary

If a hospital or CAH wishes to add information that cannot be fully included in the "Additional Information" section, an additional page may be attached to the MOON.

### **Notice Retention for the MOON**

The hospital or CAH must retain the original signed MOON in the beneficiary's medical record. The beneficiary should receive a paper copy of the MOON that includes all of the required information. Electronic notice retention is permitted.

### **Intersection with State Observation Notices**

Hospitals and CAHs in States that have State-specific observation notice requirements may add State-required information to the "Additional Information" field, attach an additional page, or attach the notice required under State law to the MOON.

## **Additional Information**

---

The official instruction, CR9935, issued to your MAC regarding this change is available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2017Downloads/R3698CP.pdf>. As mentioned earlier, the notice and accompanying instructions are available at <http://www.cms.gov/Medicare/Medicare-General-Information/BNI>.

If you have any questions, please contact your MAC at their toll-free number. That number is available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Review-Contractor-Directory-Interactive-Map/>.

## **Document History**

---

- January 24, 2017 - Initial issuance
- February 2, 2017 - The article was revised to reflect a revised CR9935 issued on January 27, 2017. In the article, the CR release date, transmittal number, and the Web address for accessing the CR were revised. All other information remains the same.

### **Disclaimer**

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents. CPT only copyright 2015 American Medical Association. All rights reserved.