

# PUBLICATION

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## The MOON Notification is Coming: CMS Publishes Final Changes [Ober|Kaler]

2016

CMS is moving forward with implementing the Medicare Outpatient Observation Notice (MOON) as announced in its [FY 2017 IPPS Final Rule \[PDF\]](#) on August 2, 2016, and published in the Federal Register on August 22, 2016 (Final Rule). As required by the Notice of Observation Treatment and Implications for Care Eligibility Act of 2015 (NOTICE Act), hospitals and critical access hospitals must provide the MOON to Medicare beneficiaries who have received more than 24 hours of observation services as an outpatient, and such notification must occur no later than 36 hours after the beneficiary begins receiving observation services. Hospitals must provide the MOON, when required under the Final Rule, to beneficiaries entitled to Medicare, whether or not the services provided are payable. This includes not only patients enrolled in both Parts A and B, but also beneficiaries enrolled only in Part A and not enrolled in Part B benefits, enrolled in Medicare Advantage, or who have Medicare as a secondary payer.

As explained in an earlier [article](#) summarizing the Final Rule, the purpose of the MOON notice is to inform Medicare patients in observation status that they do not qualify as inpatients, and thus are subject to Part B cost sharing requirements (if covered under Part B) or outpatient charges. It also notifies patients in observation status that they will not meet the 3-day inpatient hospital stay required for Medicare coverage of skilled nursing facility care following discharge.

The Final Rule makes a few notable changes from the proposed rule, including delaying the implementation date of the MOON. Hospitals will now have 90 days following the conclusion of the Paperwork Reduction Act (PRA) approval by the Office of Management and Budget to fully implement use of the MOON and comply with all of the NOTICE Act requirements. Hospitals should expect the PRA approval soon since the corresponding comment period ended on September 1, 2016. Additionally, the Final Rule clarifies that hospitals may provide the MOON to Medicare beneficiaries prior to such individuals receiving 24 hours of observation services and, by doing so, will remain in compliance with the NOTICE Act requirements. With that said, CMS advises against the routine provision of the MOON to Medicare beneficiaries at the outset of observation services since this would undermine the purpose of the NOTICE Act.

The NOTICE Act requires both written and oral notification to Medicare beneficiaries in order to meet the MOON requirements. For the written notification, CMS has developed a standard form that hospitals must use for meeting the NOTICE Act requirements. Since its introduction, the standard MOON form has undergone revisions. As currently revised for the PRA comment process, the MOON form requires hospitals to complete a free text field specifying the reason(s) a Medicare beneficiary is receiving observation services as an outpatient. This is a significant change from the previous iteration of the MOON form, which included only a general description of observation services. It is unclear the level of “specificity” required of hospitals when completing this newly added free text field, but CMS has indicated that additional guidance is forthcoming in the CMS Internet Only Manuals (IOMs).

For the oral notification, CMS has yet to publish guidance on this requirement, but hospitals must provide both the written and oral MOON notification by the newly postponed implementation date. CMS seems to suggest that the oral notification requirements will be similar to other oral notifications, such as the Important Message from Medicare, by referencing in the preamble of the Final Rule that hospitals are “familiar with providing oral

explanations of written notices.” Despite some familiarity, CMS has indicated that it will publish guidance on the oral notification component in the IOMs.

## Ober|Kaler's Comments

- Although the Final Rule provided a much-needed delay in the implementation of the MOON, Hospitals and critical access hospital should evaluate their preparedness for operationalizing the MOON requirements, including the provision of the written and oral notification to all Medicare beneficiaries entitled to benefits under Medicare (e.g., Part A only recipients, Medicare Advantage enrollees, and those who have Medicare as a secondary payer).
- CMS introduced a free text field in the written MOON notification requiring hospitals to specify the reason(s) a patient is undergoing observation services. Hospitals will need to decide which hospital staff are appropriate to complete the MOON form, including this newly introduced specificity requirement for the free text field. It may require involvement by nurse or clinical staff, as opposed to registration or other administrative staff.
- Hospitals need to monitor the PRA approval process to know when the 90-day countdown begins for implementing the MOON. This could occur soon since the deadline for comments ended on September 1, 2016.
- More specific information regarding what must be included in the free text field on the form and in the oral notification should be forthcoming from CMS in the IOMs. Hospitals should watch for the release of this guidance.