

## Report on Medicare Compliance Volume 29, Number 12. March 30, 2020

### Court Says Inpatients Changed to Observation Have Right to Appeal, Orders New Process

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By Nina Youngstrom

A federal court on March 24 ordered CMS to let Medicare patients “challenge decisions by hospitals” to change their status from inpatients to observation, dating back to 2009. Patients who were admitted as inpatients but later got the Medicare Outpatient Observation Notice (MOON) must have “a meaningful opportunity to appeal,” according to the decision from the U.S. District Court for the District of Connecticut.<sup>[1]</sup> However, the new appeal rights won’t apply to patients placed in observation at the outset.

The decision, which came down in a class-action lawsuit filed by Medicare patients placed in observation, appears to apply nationally, said attorney Judy Waltz, with Foley & Lardner in San Francisco. CMS apparently would be required to have quality improvement organizations (QIOs) hear this new breed of appeal, because they already decide beneficiary appeals of hospital discharge decisions. Judge Michael Shea was particularly concerned that Medicare beneficiaries whose status changed from inpatient to observation lose coverage for skilled nursing facility (SNF) admissions, although higher cost-sharing for observation also was a factor in his thinking.

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