

## CMS delays implementation of the NOTICE Act and MOON form requirement

August 19, 2016

### Background on the NOTICE Act

On August 6, 2015, Congress enacted the Notice of Observation Treatment and Implication for Care Eligibility Act (NOTICE Act) Public Law 114-42. The NOTICE Act requires hospitals and critical access hospitals (CAHs) to provide written and oral notification to inform patients who are hospitalized more than 24 hours that they are outpatients of the hospital or CAH receiving observation services, not hospital inpatients. In addition, this notification to patients must be given no later than 36 hours after the patient begins receiving observation services.

On April 27, 2016, the Centers for Medicare and Medicaid Services (CMS) included its [proposal for implementing the NOTICE Act](#) in the 2017 Hospital Inpatient Prospective Payment System (IIPS). In the IIPS Proposed Rule, CMS described its development of a standardized notice that all hospitals would need to use, which is called the Medicare Outpatient Observation Notice ("MOON"). Because the NOTICE Act included an effective date of one year from the date of enactment of the NOTICE Act, hospitals would have been required to comply with the NOTICE Act and give the required notice to Medicare beneficiaries who were receiving observation services as outpatients starting August 6, 2016.

### Final Rule Delays Implementation of the NOTICE Act and Use of the MOON Form

In the FY 2017 IIPS [final rule](#) displayed at the Office of Federal Register on August 2, 2016, CMS implements the NOTICE Act by revising the Medicare Conditions of Participation. CMS also announced that the rules to implement the NOTICE Act will become effective October 1, 2016, not August 6, 2016, and that the required written notice to patients, the MOON, will not become effective until 90 days following approval of the MOON by the Office of Management and Budget (OMB). However, because public comments related to the MOON will be collected until September 1, 2016 and the information from the comments must be provided to the OMB before the OMB can evaluate if the MOON should be approved, it is doubtful that the NOTICE Act can be implemented by the October 1, 2016 deadline set by CMS. Hospitals and CAHs that have not already done so should consider updating policies and procedures to address the NOTICE Act's requirements to ensure compliance with this new requirement.

