



Am I in the Hospital or Not?

Why Hospitals are 'Observing'—Not Admitting—Patients

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The Two-Midnight Rule: Patient Status

- **“Two-midnight” rule**

- CMS’s attempt to clarify the definition of observation
- Increase in observation days and inpatient appeals
- Increase in CERT rate for short inpatient stays
- Request from hospital field for clarity on inpatient review



- **“Benchmark:” whether a hospital gets inpatient payment for a claim**

- Physician had reasonable and supportable expectation of two-midnight stay

- **“Presumption:” whether Medicare review contractors can review a claim**

- Presume a claim spanning two-midnights is a reasonable/necessary admission



Positive Aspects of the Rule

Directs Medicare Review Contractors to:



- Apply “two-midnight” *presumption*
- For purposes of two-midnight benchmark, “start the clock” from the time the first outpatient service is delivered, including observation time and emergency services
- Consider physician judgment and a patient’s complex medical factors (co-morbidities, history, risk of adverse event)
- Limit contractors’ review to information available to admitting practitioner at time of a patient’s admission



The Two-Midnight Rule: Patient Status

CMS Payment Adjustment:

- CMS estimates a net shift of 40,000 cases to the more expensive inpatient setting
- **Result:** prospective cut of 0.2 percentage point (\$220 million) to offset additional inpatient spending
- AHA disagrees with this analysis



AHA Position

- Only limited guidance from CMS

- **Need time to operationalize**

- Educate providers and contractors
- Change/update internal systems & procedures to ensure compliance
- Update existing electronic medical records systems to comply with new physician order & certification requirements
- Alter work flow processes

Regulatory Action Alert!
November 18, 2013

NEED ACTION FROM Hospitals and clinical leaders
ACTION: Help inform CMS's guidance on the new admission and review criteria development
WHO: E-mail comments to CMS
HOW: Hospitals and Medicare carriers
WHY: Contractors need clear and detailed guidance

SUBMIT COMMENTS ON CMS's NEW INPATIENT ADMISSION CRITERIA
Agency is drafting initial regulatory guidance. Hospital perspective is important.

The Centers for Medicare & Medicaid Services (CMS) is developing guidance to issue Medicare, Medicaid and CHIP coverage rules for inpatient admission and review criteria. The guidance will be issued in the form of a final rule in the Federal Register. The guidance will be issued in the form of a final rule in the Federal Register. The guidance will be issued in the form of a final rule in the Federal Register.



AHA Position (continued)

Delay Enforcement:

- Currently a partial enforcement delay until April 1, 2014
- Need additional 6 months (Sept. 30, 2014)

Payment Solution:

- Payment for patients who require an intense level of services but stay in the hospital only a short time or less than two midnights



Amicus Brief: The Two-Midnight Rule

- **April 2012:** AHA submitted amicus brief in case filed by the Center for Medicare Advocacy and the National Senior Citizens Law Center
- **Purpose:** to provide background and context
- Hospitals and physicians caught in a “tug of war” between beneficiaries and the government
 - Criticism from patients and CMS over perceived use of observation status versus
 - Penalties from auditors/prosecutors; loss of reimbursement, monetary damages



The Two-Midnight Rule

Next Steps

- **Regulatory**
- **Legislative**
- **Legal**





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