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CMS Proposal Broadens Medicare Inpatient Reimbursement Eligibility Under the “2-Midnight Rule"

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On July 1, 2015, the ***Centers for Medicare & Medicaid Services (CMS)*** released proposed updates to the Hospital ***Outpatient Prospective Payment System (OPPS)*** and ***Ambulatory Surgical Center (ASC)*** Payment System for Calendar Year (CY) 2016 (the Proposed Rule). In addition to Medicare payment policy and rate updates, the Proposed Rule also changes the “2-Midnight Rule,” permitting Medicare Part A inpatient hospital reimbursement for certain short inpatient stays. Inpatient services are generally reimbursed at a higher rate than the same services performed in an outpatient setting.

Originally, CMS developed the 2-Midnight Rule as a framework to determine when payment under Medicare Part A was appropriate for inpatient stays. The 2-Midnight Rule limited Medicare Part A inpatient reimbursement to cases where the physician expected the patient to require at least a two night stay in the hospital. When a patient did stay in the hospital over two midnights or longer, the case was presumed to be appropriate for inpatient reimbursement. CMS also created a presumption of appropriate reimbursement for certain rare and unusual circumstances and specific inpatient-only procedures whose characteristics made them appropriate for inpatient coverage regardless of the duration of care.

Conversely, the 2-Midnight Rule presumed that minor surgical procedures or other treatments requiring less than a 24-hour stay in the hospital should generally be billed as outpatient services rather than inpatient services under Part A. Such short-stay procedures billed to Part A were deemed to be inherently suspect and were prioritized for medical review by Medicare Administrative Contractors (MACs) and Recovery Audit Contractors (RACs). CMS delayed the implementation of the 2-Midnight Rule several times, extending pre-payment "probe" reviews and provider education to address industry concerns.

Payment for Stays Less than Two Midnights

Despite delays and outreach efforts, CMS has faced continuing concerns from stakeholders regarding the 2-Midnight Rule's impact on provider admissions decisions for inpatient hospital services. The Proposed Rule relaxes the 2-midnight benchmark, permitting certain shorter inpatient stays to be reimbursed by Medicare Part A. Specifically, the Proposed Rule would allow, on a case-by-case basis, inpatient admissions to qualify for Part A reimbursement when the physician (a) expects the patient will need less than two midnights of hospital care and (b) nevertheless determines the patient requires formal admission to the hospital on an inpatient basis. This determination must be well documented in the medical record and must be based on complex medical factors such as the patient's history, comorbidities, and symptoms.

The Proposed Rule does not change any presumptions regarding inpatient stays lasting less than 24 hours, or regarding inpatient stays that span two midnights or more. CMS did note its expectation that "the patient will remain in the hospital at least overnight" for "most inpatient admissions where the stay is expected to last less than the 2-midnight benchmark."

FIG. 1: PART A PAYMENT AND MEDICAL REVIEW – PROPOSED RULE FOR INPATIENT STAYS

Medical Review Criteria

A physician's decision to admit a Medicare beneficiary to the hospital is subject to medical review by MACs or RACs. The Proposed Rule reiterates that inpatient stays lasting less than 24 hours will be prioritized for medical review, and inpatient stays extending beyond two midnights will not. However, the Proposed Rule also emphasizes the importance of clear medical record documentation of the provider's admission decision. Even for most inpatient stays expected to last more than two midnights, if the medical record lacks support, Part A payment is subject to the clinical judgment of the medical reviewer.

The Proposed Rule does not provide specific criteria for medical review entities to use when evaluating inpatient stays that are not expected to span at least two midnights. CMS did note, for payment purposes, certain factors that "would be relevant to determining whether an inpatient admission where the patient stay is expected to be less than two midnights is nonetheless appropriate for Part A

payment": (1) the severity of the patient's symptoms and signs, (2) the medical predictability of the patient experiencing an adverse event, and (3) whether the patient requires diagnostic studies that do not ordinarily require a hospital stay greater than 24 hours long. CMS is considering whether Medicare should adopt specific medical review criteria for shorter inpatient claims, and is specifically inviting public comment on this topic.

Medical Review Oversight

CMS also announced in the Proposed Rule that the initial medical review of shorter inpatient claims would be conducted by certain Quality Improvement Organizations (QIOs), rather than by MACs or RACs, going forward. According to CMS, these QIO post-payment reviews will examine claims for adherence to the 2-Midnight Rule in addition to other factors, such as medical necessity, quality of care, and appropriate place of service. QIOs will then refer claim denials to the MACs for payment adjustments. Facilities with high denial rates, consistent non-compliance with the 2-Midnight Rule, or lack of improvement after educational intervention will be referred to the RACs for further payment audits. CMS emphasized that this "strategy" change would occur no later than October 1, 2015, and would occur even if the proposed changes to the 2-Midnight Rule are not finalized. The utilization of QIOs as part of this process appears to address one of the key concerns raised regarding the prior rule — that clinical decision-making should not be reviewed solely by auditors with no background in quality of or clinical care.

Proposed Rule's Impact

CMS's Proposed Rule adds some flexibility to the 2-Midnight Rule and acknowledges that certain shorter inpatient stays may be properly reimbursed by Medicare Part A. However, it is not clear that the Proposed Rule gives stakeholders tools for consistency, as the new standard for shorter inpatient stays is subjective (i.e., on a case-by-case basis). Additionally, as CMS appears to expect all proper inpatient stays to span at least one midnight, providers may experience other decision-making pressures as a result of the Proposed Rule. As it is not clear that the proposed changes fully address the clinical care and physician decision-making issues raised in the past, both hospitals and physicians may have continuing concerns regarding the Proposed Rule.

Stakeholders should submit comments on the Proposed Rule, including short-stay medical review criteria, to CMS no later than August 31, 2015. A final rule is expected to be issued on or around November 1, 2015. The Proposed Rule can be accessed here.