PUBLICATION

CMS Issues FAQs for Inpatient '2 Midnight' Rule [Ober|Kaler]

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CMS issued its first set of FAQs on the new 2 midnight inpatient admission standards [PDF] on September 26. In those FAQs, CMS stated:

- Medicare Administrative Contractors (MACs) and Recovery Auditors are not to review claims spanning more than two midnights after admission for a determination of whether the inpatient admission was appropriate.

  Ober|Kaler's Comments: Expect audit of inpatient admissions for one night stays. If a patient is in outpatient status, e.g., receiving observation services, over one midnight and then is admitted as an inpatient for one night, the 2-midnight standard would be met, as CMS has indicated that time receiving outpatient observation services counts for determining a 2 midnight stay. So it is important that the medical record clearly document the outpatient observation services over the first midnight. In addition, despite this statement of instruction, MACs and Recovery Auditors are authorized to audit providers where there are two documented midnights, if the auditor believes there is an intent to game the system.

- For a period of 90 days, Recover Auditors are not permitted to review inpatient admissions of one midnight or less that begin on or after October 1, 2013.

  Ober|Kaler's Comments: This doesn't mean the Recover Auditors won't eventually be auditing dates of service beginning October 1. It just means they won't be doing so in the next 90 days.

- Review contractors should evaluate the physician's expectation that care will include at least two midnights in the hospital, based on the information available to the practitioner at the time of the admission decision.

  Ober|Kaler's Comments: Although CMS expresses this as a confirmation of its existing policy, anyone who has defended disallowances of inpatient admissions knows that the contractors often look to subsequent patient developments to defend their disallowance of an inpatient stay. CMS's clear statement of its policy should be helpful to providers going forward.

- In the furtherance of education to providers, MACs are instructed to audit a probe sample of 10-25 inpatient claims that span less than two midnights with dates of admission from October 1, 2013 through December 31, 2013. Since the review is on a prepayment basis, CMS instructs that hospitals can rebill any denied inpatient admissions.

  Ober|Kaler's Comments: These reviews will encompass only patients who have been discharged so there will be no opportunity to rebill for services that can be performed only on an outpatient basis, such as observation services, since the Code 44 rules that would allow such billing cannot be met post-discharge.

- If the MAC audit identifies no issues in the probe audit, the MAC is instructed not to further audit this period unless there is a change in billing patterns. If the MAC identifies issues, it is to conduct education for that hospital and follow-up as necessary.

  Ober|Kaler's Comments: As of the publication of this article, the new rule applies. Providers have not been given much time to put in place major systemic changes and education of their physicians and utilization review staff of the new rules, many aspects of which are still not clear as CMS continues to advise the industry that it will issue guidance "some time this fall." Providers should document their efforts to bring their organizations into compliance, so that any shortcomings that may be found by Medicare auditors cannot be attributed to legitimate assertions that it was due to a culture of being insensitive to complying with the new rules.

See our earlier related *Payment Matters* articles: "CMS Issues Inpatient Admission Order and Certification Guidance" and "CMS Adopts Final Rules for Inpatient Admissions and Inpatient Part B Billing."