PUBLICATION

CMS Issues Additional Guidance Related to Two-midnight Rule [Ober|Kaler]

November 13, 2013

Earlier this month, CMS posted three new documents related to the two-midnight rule for inpatient admissions on its webpage for inpatient hospital reviews: new FAQs, as well as CMS directions for selecting hospital claims for probe audits and for conducting the probe audits. CMS announced that it was extending the probe period so that it now applies to admissions from October 1, 2013 through March 31, 2014. The new guidance includes:

Probe Audits

- The Medicare Administrative Contractors (MACs) will conduct the probe audits for claims submitted by acute care inpatient hospital facilities, long term care hospitals and inpatient psychiatric facilities; critical access care hospitals are specifically excluded.
- In the first round of probe audits, MACs will select a sample of 10 claims for prepayment review (25 claims for large hospitals). Based on the results, further probe audits may be conducted by the MACs.
- Recovery Auditors will be prohibited from reviewing claims for appropriate admissions in accordance with the two-midnight rule, during the probe audit period.
- MACs and Recovery Auditors are permitted to review claims during the probe period for other issues, e.g., to determine if the services were reasonable and necessary and the coding was accurate.

FAQs on 2-Midnight Rule Generally

- The start time for the 2-midnight determination is when the beneficiary starts receiving services following arrival at the hospital. This excludes wait time prior to initiation of care, which CMS concludes would exclude triaging, such as obtaining vital signs, before initiation of services.
- In reply to a question regarding whether to count time toward the 2 midnights when a patient is awaiting a certain test or procedure, e.g., over the weekend when the services are not available, CMS asserts that extensive delays in the provision of medically necessary services should be excluded from the time counted.
- Physicians are not expected to include a separate attestation of expected length of stay, as "this information may be inferred form the physician's standard medical documentation, such as his or her plan of care, treatment orders, and physician's notes."
- CMS reiterated that its rule currently does not allow for an inpatient stay in intensive care in the absence of a 2 midnight expectation. However, CMS has asked for input from the industry regarding any situations, other than patients on the inpatient-only treatment list, that should be allowable as inpatient stays even if they are not expected to span 2 midnights. Suggestions should be mailed to IPPSAdmissions@cms.hhs.gov with "Suggested Exceptions to the 2-Midnight Benchmark" in the subject line.
- Generally, review contractors will not examine inpatient stays that span 2 midnights for appropriateness of the admission, unless it believes a provider is gaming the system. Contractors will look for patterns of incorrect DRG assignments, inappropriate or systematic delays and lack of medical necessity for services at the hospital in order to identify such gaming. Data sources that contractors may use, include Comprehensive Error Rate Testing (CERT) contractor reviews, First-

look Analysis for Hospital Outlier Monitoring (FATHOM) and Program for Evaluating Payment Patterns Electronic Report (PEPPER).

- CMS is exploring means by which a provider may identify on a Part A claim the time a beneficiary spends as an outpatient prior to admission. This would provide review contractors with much needed information in their review of inpatient claims that depend on the outpatient time to reach the expected 2 midnights.