

# PUBLICATION

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## CMS Proposes Limited Exception to Two-Midnight Rule and QIO Review of Short Stays [Ober|Kaler]

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**In the 2016 inpatient prospective payment system (IPPS) proposed rule, CMS promised to provide further guidance on the controversial "two midnight" rule in the forthcoming outpatient prospective payment system (OPPS) rule.**

The proposed rule, released on July 1 and published in the Federal Register on July 8 ([80 Fed. Reg. 39200, 39206, 39348-53, 39372](#)) [PDF], provides additional guidance on the "rare and unusual" circumstance under which an admission that is expected to last less than two midnights might nonetheless qualify for payment under Part A. It also announces changes to the medical review process for short inpatient stays. **Comments are due by August 31, 2015.**

The two-midnight rule establishes the general policy that patients who are admitted to the hospital based on an expectation that they will require hospital care for at least two midnights will qualify for inpatient coverage under Part A. Patients whose admissions are expected to last less than two midnights would be covered under Part B, assuming in both instances that the admission is reasonable and necessary. Under the rule, both inpatient and outpatient care (such as emergency services) qualify in determining the length of the admission, and admissions where early discharge occurs due to death or other unpredictable factors are not necessarily disqualified from inpatient coverage. Previous articles discussing the two midnight rule can be found here: [Proposed IPPS Rule](#), [Final IPPS Rule](#), [FAQs](#), [Probe and Educate Audits](#), and [American Hospital Association Challenge](#).

### Rare and Unusual Circumstances

CMS established two exceptions to the general rule that there must be an expectation of a two midnight stay to allow an inpatient admission: procedures on the OPPS inpatient only list and certain "rare and unusual" circumstances which, in the reasonable medical judgment of the admitting physician or practitioner, were not likely to meet the two-midnight benchmark but which nevertheless warranted payment under Part A. The only specifically-identified service qualifying under the rare and unusual circumstances exception up to this point has been an admission for newly-initiated mechanical ventilation.

CMS acknowledges in this proposed rule that other situations may also qualify on a narrow, case-by-case basis and proposes several criteria that should be used in determining whether Part A payment may be appropriate. Specifically, CMS identifies patient history and comorbidities, the severity of the signs and symptoms exhibited by the patient, current medical needs, and the risk of an adverse event. Cases that the admitting physician believes should qualify for a reasonable and necessary inpatient stay should be documented in the medical record. Such instances will be identified for medical review.

### Contractor Review

CMS also acknowledges that the extended "Probe and Educate" program used to implement the two midnight rule would draw to a close on September 30, 2015. It announces two changes to the claims review process

going forward. Most notably, it states that quality improvement organizations (QIOs), rather than the Medicare Administrative Contractors (MACs), would be responsible for the medical review of short stay claims. Additionally, CMS states that limits would be placed on Recovery Auditory Contractor (RAC) reviews of claims, establishing a look back period of six months from the date of service, provided that the claim was filed within three months of the date of service.

## **Ober|Kaler's Comments**

CMS continues to gather data on the implementation of the two-midnight rule. Hospitals should be leery of overutilizing the "case-by-case" exception for rare and unusual circumstances justifying a stay shorter than two midnights. CMS does not appear to believe that many circumstances will qualify. CMS clearly states in the proposed rule preamble that it "will monitor the number of these types of admissions and plan[s] to prioritize these types of cases for medical review."