PUBLICATION

Medicare Two-Midnight Rule and Observation Status Updates

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What's new from Medicare in the areas of the Two-Midnight rule and observation services? CMS recently published updates to a Medicare manual reflecting clarifications to its Two-Midnight policy, a Medicare Quality Improvement Organization (QIO) announced changes to the audit procedures related to the Two-Midnight rule and CMS clarified its policies on the Medicare Outpatient Observation Notice (MOON).

Manual Updates Addressing the Two-Midnight Rule

CMS recently published updates to its Medicare Benefit Policy Manual (MBPM) that address the rules around physician certifications and inpatient orders pursuant to the Two-Midnight rule. CMS Change Request 9979, Transmittal 234. These provisions update Section 10.2 of Chapter 1 of the MBPM and incorporate much of the subregulatory guidance issued by CMS in its January 30, 2014 notice. The MBPM provisions discuss the content, timing and who may sign a physician certification or an inpatient order. Physician certifications are required only for long-stay cases and outlier cases.

QIO Short-Stay Inpatient Audits

One of the QIOs responsible for auditing providers' compliance with the Two-Midnight rule recently announced that CMS was changing the criteria to identify short stays to be audited by the QIO. Previously, QIOs were limited to ten case reviews for small providers and to 25 cases for larger institutions, per six-month period. Beginning in April 2017, this will change and the results on past QIO audits of short stays will be used to determine future audits. Specifically, the top 175 providers with high or increasing numbers of short-stay claims will have QIO reviews of 25 cases randomly selected, and other providers that had a "major" concern (defined as an error rate greater than 20 percent) will be subject to review of ten cases randomly selected.

Providers should continue to be mindful of these audits and provide the requested information to the QIO promptly, if applicable, in order to improve their record on audit. QIOs will continue to report their results to CMS, which may in turn refer high error rate providers to RACs for further review.

MOON Requirements

The MOON must explain the status of an individual as an outpatient receiving observation services and not as an inpatient of the hospital or critical access hospital, and the reason for such status.

In a February 28, 2017 Hospital/Quality Initiative Open Door Forum call, CMS provided the following guidance regarding the MOON, which is mandatory beginning March 8 of this year:

- Traditional Medicare beneficiaries, as well as Medicare Advantage beneficiaries, must receive the MOON.
- The MOON must be supplied by hospitals, which includes critical access hospitals and psychiatric hospitals.
- The MOON must remain two pages as formatted by CMS. *See* CMS's BNI page for more details. Two-sided or double-sided is acceptable.
- Hospital's business logos and contact information may be included at the top of the form but only in the space provided in the CMS form.

- If there are state-required observation notices, they may be attached to the MOON or the information may be included in the additional information section of the CMS form.
- The MOON must explain the status of an individual as an outpatient receiving observation services and not as an inpatient of the hospital or critical access hospital. A hospital may use pre-populated checkboxes on the MOON to explain the status and the reason as long as a free-text field also remains as an option.
- Hospitals may deliver the MOON prior to a beneficiary receiving 24 hours of observation services.
- The format of the verbal notification required as part of the MOON delivery is at the discretion of the hospital and may include a video, but staff must be available for questions.
- Compliance with the MOON will be reviewed by surveyors as part of the hospital's conditions of participation and non-compliance will be identified at the standard condition or immediate jeopardy level.