



Am I in the Hospital or Not?

Why Hospitals are 'Observing'—Not Admitting—Patients

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The Two-Midnight Rule: Patient Status

- **“Two-midnight” rule**

- CMS’s attempt to clarify the definition of observation
- Increase in observation days and inpatient appeals
- Increase in CERT rate for short inpatient stays
- Request from hospital field for clarity on inpatient review



- **“Benchmark:” whether a hospital gets inpatient payment for a claim**

- Physician had reasonable and supportable expectation of two-midnight stay

- **“Presumption:” whether Medicare review contractors can review a claim**

- Presume a claim spanning two-midnights is a reasonable/necessary admission



Positive Aspects of the Rule

Directs Medicare Review Contractors to:



- Apply “two-midnight” *presumption*
- For purposes of two-midnight benchmark, “start the clock” from the time the first outpatient service is delivered, including observation time and emergency services
- Consider physician judgment and a patient’s complex medical factors (co-morbidities, history, risk of adverse event)
- Limit contractors’ review to information available to admitting practitioner at time of a patient’s admission



The Two-Midnight Rule: Patient Status

CMS Payment Adjustment:

- CMS estimates a net shift of 40,000 cases to the more expensive inpatient setting
- **Result:** prospective cut of 0.2 percentage point (\$220 million) to offset additional inpatient spending
- AHA disagrees with this analysis



AHA Position

- Only limited guidance from CMS

- **Need time to operationalize**

- Educate providers and contractors
- Change/update internal systems & procedures to ensure compliance
- Update existing electronic medical records systems to comply with new physician order & certification requirements
- Alter work flow processes

Regulatory Action Alert!
November 18, 2013

NEED ACTION FROM Hospitals and clinical leaders

ACTION Read through CMS's guidance on the new admission and review criteria immediately

WHY E-mail comments to CMS

HOW Hospitals and Medicare payers

WHY Contractors need clear and detailed guidance

SUBMIT COMMENTS ON CMS's NEW INPATIENT ADMISSION CRITERIA
Agency is drafting initial regulatory guidance. Hospital perspective is important.

The Centers for Medicare & Medicaid Services (CMS) is a White House partner in a major initiative to improve the quality of care and reduce costs. As part of this effort, CMS is updating its inpatient admission and review criteria. The new criteria will be implemented on April 1, 2014. We encourage you to submit comments on the new criteria by November 18, 2013. Comments should be submitted to the following email address: comment@cms.hhs.gov. For more information, visit www.cms.gov.



AHA Position (continued)

Delay Enforcement:

- Currently a partial enforcement delay until April 1, 2014
- Need additional 6 months (Sept. 30, 2014)

Payment Solution:

- Payment for patients who require an intense level of services but stay in the hospital only a short time or less than two midnights



Amicus Brief: The Two-Midnight Rule

- **April 2012:** AHA submitted amicus brief in case filed by the Center for Medicare Advocacy and the National Senior Citizens Law Center
- **Purpose:** to provide background and context
- Hospitals and physicians caught in a “tug of war” between beneficiaries and the government
 - Criticism from patients and CMS over perceived use of observation status versus
 - Penalties from auditors/prosecutors; loss of reimbursement, monetary damages



The Two-Midnight Rule

Next Steps

- Regulatory
- Legislative
- Legal





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