

CMS' Evolving Guidance on the new "Two Midnight" Rule for Inpatient Admissions: CMS Temporarily Restrains Contractors, But Hospitals Must Immediately Update Admission Order Forms to Avoid Denials and False Claims Liability

On September 5, 2013, the Centers for Medicare and Medicaid Services ("CMS") released an [article](#) detailing new documentation requirements for inpatient admission orders and certifications stemming from [new requirements](#) set forth in the 2014 Inpatient Prospective Payment System ("IPPS") Final Rule. In the article, CMS confirmed its "[two midnight rule](#)" and stated that the physician certification, which includes the practitioner order, will be considered with information in the medical record as evidence that the hospital inpatient services were reasonable and necessary.

Several weeks after releasing the article, CMS [announced](#) it would temporarily restrain its RACs from reviewing inpatient hospital claims for patient status beginning October 1, 2013, the effective date of the new order and certification requirements, through December 31, 2013. This temporary restraint was intended to provide hospitals an implementation period for updating admission order forms and educating employees.

On November 4, 2013, CMS made yet another [announcement](#) that it would extend the period of restraint through March 31, 2014. However, CMS also qualified the level of "restraint" of its auditors by adding that claims submitted during the restraint period will still be subject to reviews for issues unrelated to the two midnight rule on patient status. However, RACs will not be able to conduct post-payment reviews of inpatient claims with dates of service from October 1, 2013 to March 31, 2013 for compliance with the two midnight rule. This should come as some relief to hospitals still implementing changes to admission orders and certifications into their medical record systems as a result of the new two midnight standard.

Order & Certification Requirements

In the September 5, 2013 [article](#), CMS confirmed that beginning on October 1, 2013, inpatient claims that span at least two midnights will presumptively qualify as appropriate under Medicare Part A, while inpatient claims spanning less than two midnights will be presumptively inappropriate for payment under Part A. Additionally, CMS set forth the following requirements for physician certification of inpatient services of hospitals (excluding inpatient psychiatric facilities):

Content –

- a) Authentication of the practitioner order, including (i) specific reference to inpatient admission; and (ii) that the services were appropriately provided as inpatient services under the two-midnight benchmark.
- b) Reason for inpatient services, either – (i) hospitalization of the patient for inpatient medical treatment or medically required inpatient diagnostic study; or (ii) special or unusual services for cost outlier cases under the IPPS.
- c) Estimated time required in the hospital.
- d) Plans for post-hospital care, if appropriate.
- e) Critical Access Hospitals ("CAHs"): the physician must certify that the beneficiary may reasonably be expected to be discharged or transferred within 96 hours of admission.

Timing – Certification must be completed, signed, dated, and documented in the medical record prior to discharge, except for outlier cases and CAH inpatient services. For purposes of the two midnight presumption, the inpatient stay has not begun until the admission order is documented and the patient has begun receiving services. For patients arriving in the ED, the inpatient stay has begun when the beneficiary starts receiving care at the hospital.

Authorization to sign the certification – Certifications must be signed by the physician responsible for the case, or by another physician who has knowledge of the case and is authorized by the responsible physician or the hospital's medical staff. Verbal orders to admit are permitted if the ordering practitioner is included, and the order is authenticated prior to discharge or in accordance with state law.

Format – There are no specific forms required. Hospitals may locate certifications on forms, notes, or records that are appropriately signed by the required practitioner.

“Two Midnights” Clarification

CMS confirmed in an [open call with providers](#) and [Q&A](#) that the physician's decision to admit an inpatient is based on the reasonable expectation at the time of admission that the patient's length of stay will span at least two midnights. Because this determination is based on an expectation, it is possible that unforeseen circumstances (e.g., departure against medical advice, transfer, death, quick recovery) may result in a shorter length of stay. These stays may nevertheless be appropriate to bill as inpatient, so long as the inpatient determination is appropriately documented and is founded on the patient's complex medical factors documented in the medical record.

Contractors Restrained

In a flurry of [announcements and Q&As](#), CMS has indicated that it will temporarily restrain Medicare Administrative Contractors (“MACs”) and Recovery Audit Contractors (“RACs”) from reviewing claims spanning two or more midnights after admission for a determination of whether the inpatient admission and patient status was appropriate.

RACs – CMS will not permit RACs to review inpatient admissions of zero or one midnight that begin between October 1, 2013 and March 31, 2014. CMS indicated that hospitals should spend this six-month period ensuring policies and procedures are appropriately updated, and employees are fully trained on the heightened inpatient order and certification requirements. CMS officials clarified that the limitations on the RACs' ability to conduct post-payment reviews of these claims for patient status will be “indefinite.”

MACs – Beginning October 1, 2013, MACs began testing each hospital's compliance with the new inpatient standards by reviewing a sample of 10 to 25 of each hospital's inpatient claims spanning zero or one midnight. If irregularities are apparent, the MAC may deny improper claims, but must conduct education of how the hospital might comply in future submissions. MACs will perform this “probe and educate” program pursuant to [specific CMS guidance](#). The hospital may resubmit denied claims under Medicare Part B within one year, pursuant to the IPPS Final Rule. At this time, claims submitted by CAHs will not be reviewed.

Lastly, CMS warned that claims subject to the two midnight presumption may still be reviewed for issues unrelated to appropriateness of inpatient admission under the two midnight benchmark (e.g., to ensure the services provided during the stay were reasonable and necessary and ensure accurate coding and documentation).

Looking Ahead

Although CMS has temporarily restrained its medical review contractors from October 1, 2013 through March 31, 2014, hospitals must act quickly to update policies and procedures and educate staff. Hospitals face certain denials and potential false claims liability for submitting claims that do not meet the new order and certification

requirements. Considering the level of specificity required in the physician certification and the penalties for noncompliance, hospitals are advised to draft a separate inpatient admission statement form to assist employees with transition to the two-midnight rule.

If you have questions regarding CMS' new order and certification requirements, or if your hospital needs assistance in updating admission order forms, please contact a member of HDJN's Reimbursement team:

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