



CMS updates and clarifies "two-midnight" rule: More Guidance on Reviewing Hospital Claims for Patient Status

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On March 12, 2014, the Centers for Medicare & Medicaid Services (CMS) issued new [guidance](#) that updates and clarifies its previous guidance on how it will review patient status relating to inpatient hospital claims under the two-midnight rule. Hospital personnel should review and become familiar with all of the guidance CMS has released on this issue. In this bulletin, we detail the ways in which CMS's recent guidance clarifies how the two-midnight benchmark relates to patient transfers and cancelled surgical procedures.

Patient Transfers

In situations where a patient has been transferred from one hospital to another, CMS advises that in determining whether the two-midnight benchmark was met, pre-transfer time and care at the initial hospital is included. This means that Medicare administrative contractors (MACs) will take into account the pre-transfer time and care provided to the beneficiary at the initial hospital when determining whether the receiving hospital's decision to admit the patient as an inpatient is consistent with the two-midnight rule. Although this means the receiving hospital's start clock for transferred patients begins when the care begins in the initial hospital, any excessive wait times or time spent in the hospital for non-medically necessary services will be excluded.

Time spent in transit from the initial hospital to the receiving hospital is also excluded. CMS notes in the guidance that to ensure compliance and to deter gaming or abuse, MACs may request records from the initial hospital to support the medical necessity of the services provided and to verify when the beneficiary began receiving care. In addition, claim submission for transfer cases will be monitored and may be subject to targeted review if any billing aberrance is identified.

CMS further clarified in the guidance that where a patient moves from one part of the hospital (including an on-campus emergency department (ED) or an off-campus provider-based ED/practice location) to another part of the same hospital, identified as having the same CMS Certification Number (CCN), the ED is considered part of that hospital for purposes of the two-midnight rule and therefore the total time in the hospital should be counted for purposes of the two-midnight benchmark. However, if the ED is not established as an off-campus provider-based/practice location (i.e., they have different CCNs), the beneficiary's move from one to the other would be considered a transfer and the rules for transfers outlined above would apply.

Cancelled Surgical Procedures

In cases where a surgical procedure is cancelled after an inpatient admission, the recent CMS guidance indicates that MACs will review such claims based on the general two-midnight rule benchmark instruction. This means if the physician reasonably expected the beneficiary to require a hospital stay for two or more midnights at the time the inpatient order was written and during the formal admission — and this expectation is documented in the medical record — the inpatient admission is generally appropriate for Medicare Part A payment even though the patient did not actually remain in the hospital past two midnights.

We will issue additional updates as CMS continues to refine and clarify the two-midnight rule.

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