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HEALTHCARE BUSINESS NEWS

# Contractors to Provide Two-Midnight Guidance: CMS

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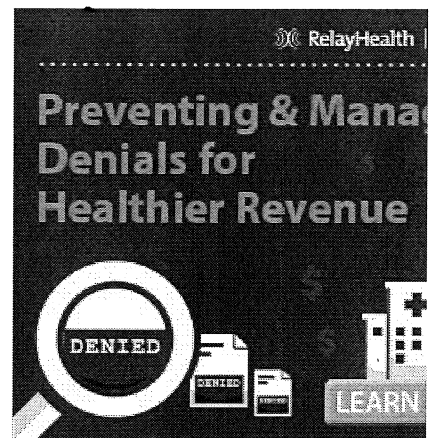
CMS IS GIVING HOSPITALS A CHANCE TO COMMENT ON A RECENTLY ISSUED NOTICE REGARDING JUSTIFICATION FOR A 0.2 PERCENT HOSPITAL CUT RELATED TO THE TWO-MIDNIGHT POLICY.

Dec. 17—Hospitals confused about a new physician exception to the Medicare short stay rule should seek clarification from contractors until regulators issue further details, according to the Centers for Medicare & Medicaid Services (CMS).

Uncertainty has swirled around a change in the Medicare short stay policy known as the two-midnight rule since it was finalized in the fall. According to the payment policy, inpatient admissions and payment under Part A require physician documentation that the patient will need care spanning two midnights. The new change would allow shorter admissions if a physician identified "rare and unusual circumstances" where such an admission was necessary.

The agency has promised to issue sub-regulatory guidance to clarify such exceptional circumstances but has not yet done so, even as the Jan. 1 start of the modified policy looms. After Jan. 1, quality improvement organizations (QIOs) and recovery audit contractors (RACs) will conduct patient status reviews, although RAC reviews will be limited to providers that have been referred by a QIO as exhibiting "persistent noncompliance with Medicare payment policies."

During a regular call this week, CMS officials told hospitals that until sub-regulatory guidance is issued they should seek guidance on the subject from their Medicare contractors.



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"How that new rule will work, they should be working with their contractors and asking those questions in the meantime, but CMS will be releasing additional guidance," Tiffany Swygert, an acting deputy director for CMS, said in a Dec. 15 call with providers.

But contractors have not clarified the exemption in their communications with hospitals, said Day Egusquiza, who advises hospitals on payment issues in her role as president of AR Systems.

Egusquiza had urged hospitals to not use the exemption.

"It's very subjective," Egusquiza said about the exemption. "If physicians are given the opportunity to say, 'My patient is so rare and unusual that he doesn't need two midnights, he doesn't meet the benchmark of a second midnight after the outpatient first midnight, but I'm going to make him an inpatient anyway'—now, how do you set guidelines for what that means?"

She views the exemption as a throwback to the admission policy standard used before Medicare added the two-midnight short stay policy in 2013. The vagueness of the pre-two-midnight policy—along with the inability of physicians to provide consistently detailed justifications for such admissions—cost hospitals billions of dollars in challenges from Medicare auditors, Egusquiza said.

"We can all pretend that our doctors are going to write a beautiful story as to why this is so rare and unusual that they don't meet two midnights or a one-and-one midnight," Egusquiza said in an interview. "They don't write it, guys."

CMS noted in its final rule implementing the new admissions policy that such exemption cases "would be prioritized for medical review."

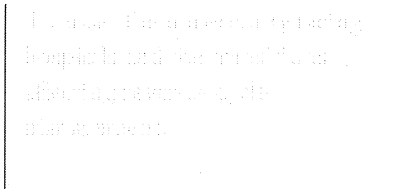
An alternate approach for hospitals would be to use the two-midnight benchmark, under which a patient is placed in observation and then converted to inpatient status if needed.

"It's massive flexibility we have right now," Egusquiza said. "Use the two-midnight presumption and two-midnight benchmark and steer away from 'rare and unusual,' which will be next to impossible to prove in the record."

**Fee Rule**

A hospital fee related to the two-midnight policy also is under renewed discussion. CMS issued a November notice with comment period in which it reiterated its justification for cutting hospital inpatient payments by 0.2 percent to offset an expected increase in inpatient admissions under the two-midnight policy. Specifically, CMS expected inpatient prospective payment system (IPPS) expenditures to increase by \$220 million in FY14 because of the short stay policy.

Medicare Payment Advisory Commission (MedPAC) data released in December reported that Medicare fee-for-service inpatient spending per beneficiary actually decreased by 7 percent in 2014. That analysis included both hospitals paid through IPPS and critical access hospitals. Additionally, MedPAC reported that Medicare inpatient hospital use declined by 4 percent in 2014.



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The latest CMS justification for the two-midnight cut came in response to a court directive in the case of a legal challenge by hospitals to the pay cut. The court ordered CMS to provide further justification and additional opportunity for hospitals to comment on the cut. Comments are due Feb. 2.

The ongoing annual cut has been in effect since Oct. 1, 2013.

### Improper Pay Improved

Meanwhile, the two-midnight rule and corresponding educational efforts were credited by CMS's annual Agency Financial Report with reducing improper inpatient hospitals claims from 9.2 percent in 2014 to 6.2 percent in 2015.

Such payments are usually those provided for products or services that do not meet Medicare or Medicaid coverage and medical-necessity criteria, that are incorrectly coded, or that do not include the necessary documentation.

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