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Billing Noncovered Observation Hours Is Compliance Risk; ABN Has Charity-Care Upside

By Nina Youngstrom

Only observation hours covered by Medicare are billable with G0378 or count toward the expectation that a patient will stay two midnights in the hospital, compliance requirements that may seem straightforward but still seem to cause trouble, experts say.

"Noncovered observation services should not be billed to Medicare as covered because it has the potential to general overpayments," said Kimberly Hoy, director of Medicare and compliance for HCPro, at a Nov. 2 webinar sponsored by the Health Care Compliance Association. That includes time spent in actively monitored services or custodial care. CMS has said systematically billing for noncovered observation hours could be considered gaming "or abusing the system to keep everybody for two midnights" and qualify for Part A payment under the Two-Midnight Rule, she noted. Hospitals aren't required to report noncovered observation services on Medicare claims, although there's a code available if they want to go that route. The code, A9270, is used with an advance beneficiary notice (ABN).

Billing for covered hours—which requires accurate counting of the time patients spend in observation and appropriate use of codes—is one of the challenges facing hospitals in this area, Hoy said. Other challenges include delivery of the Medicare Outpatient Observation Notice (MOON) in accordance with CMS requirements. Hospitals have decisions to make around observation, including whether to use A9270 and an ABN, which offers advantages in the charity care realm and helps encourage patients and their families to leave the hospital if continued observation services aren't medically necessary and they will be on the hook, she said.

Although it's often misunderstood, Medicare considers observation a service provided to people in outpatient status and many observation requirements parallel other outpatient services, Hoy noted. Observation, which doesn't begin until a physician signs an order for it, has specific documentation requirements. "We want to see the physician or nonphysician practitioner involved with the patient," she explained, with their registration, discharge and progress notes written, timed and signed by the physician. "It's not plunking them in a bed, with a nurse keeping an eye on the patient." An explicit risk assessment is also required. "It's documenting why the patient would benefit from staying in observation" versus being discharged and returning if their condition worsens, Hoy said. "That is setting the stage for the medical necessity of observation that may eventually be the basis for a two-midnight benchmark because observation is included in the two midnights," she noted.