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MA Final Rule: CMS Requires Two-Midnight Rule, Puts Limits on Internal Coverage Criteria

By Nina Youngstrom

In what passes for neon lights in the regulatory world, CMS said Medicare Advantage (MA) plans must follow the two-midnight rule, its case-by-case exception and the inpatient-only (IPO) list, according to the final 2024 rule on policy and technical changes to MA plans announced April 5.^[1] Having MA and traditional Medicare on the same page brings more coherence to utilization review and case management, but hospitals should expect MA plans to closely review the medical necessity of admissions, an expert said.

While the proposed rule stated that MA plans have to live by the same coverage criteria as traditional Medicare, it didn't explicitly cite the two-midnight rule, IPO list and case-by-case exception. This time around, CMS didn't mince words. "It's exciting," said Ronald Hirsch, M.D., vice president of R1 RCM. "They confirmed the two-midnight rule applies to Medicare Advantage and the inpatient-only rule applies to Medicare Advantage."

As CMS explained in the final rule, "under § 422.101(b)(2), an MA plan must provide coverage, by furnishing, arranging for, or paying for an inpatient admission when, based on consideration of complex medical factors documented in the medical record, the admitting physician expects the patient to require hospital care that crosses two-midnights (§ 412.3(d)(1), the 'two midnight benchmark'); when admitting physician does not expect the patient to require care that crosses two-midnights, but determines, based on complex medical factors documented in the medical record that inpatient care is nonetheless necessary (§ 412.3(d)(3), the 'case-by-case exception'); and when inpatient admission is for a surgical procedure specified by Medicare as inpatient only (§ 412.3(d)(2))."

But CMS draws the line at the two-midnight presumption of the two-midnight rule, which has a slightly different meaning. Under the presumption, hospital stays that cross two midnights after a patient has been admitted as an inpatient generally are considered payable under Part A and insulated from Medicare reviews (e.g., Medicare administrative contractors [MACs], recovery audit contractors and quality improvement organizations). In the MA final rule, CMS said MA plans are free to audit hospitals for compliance with the two-midnight presumption. Hirsch said in contrast to the presumption, which is applied after the hospital stay is over, the benchmark is applied at the time of the admission decision, and if the physician admits a patient as an inpatient based on an expectation of two midnights and it's clinically supported, the MA plan must accept that admission even if the resulting hospital stay is fewer than two midnights.

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