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QIO Views Short Stays More Favorably in New Publication, Experts Say; CMS Reviewed It

By Nina Youngstrom

Livanta, the CMS contractor that reviews short hospital stays under Medicare's two-midnight rule, has opened the door to greater use of the case-by-case exception and seems to have a more generous view of inpatient admissions than in its audits—including for appendectomies and gallbladder removals—according to its July publication.[1]

That's the take of physician advisors who reviewed it. "They are much more liberal in allowing inpatient admissions on one-day stay patients," said Ronald Hirsch, M.D., vice president of R1. Livanta's medical directors clarified they're talking about "emergent or urgent operations, not any admission from the emergency room for non-urgent conditions," according to an email exchange with Hirsch. But he said people generally don't show up at the emergency department (ED) for non-emergency appendectomies and cholecystectomies. Livanta also green-lit Part A payment for a one-day stay for a patient with melena although it denied claims along those lines last year. "I was shocked because it seems so different than what we have been told in audits," Hirsch said.

A CMS spokesperson told *RMC* it reviewed Livanta's document before publication. The spokesperson noted that "Livanta's reviews must comply" with CMS's two-midnight guidelines and regulatory requirements.

What to do with the Livanta development is an open question. At a minimum, hospitals should work with physicians to improve documentation of high-risk, one-day stays and push back on denials if they conflict with Livanta's publication, Hirsch said. "They wouldn't publish it if they didn't expect people to use the examples of what they could do."

But Stephanie Van Zandt, M.D., medical director of physician advisor services at a large health system in Florida, said it will continue to be "super conservative" with Medicare admissions under the two-midnight rule.

"Livanta is stepping out on a limb," Van Zandt said. "When you read the Livanta cases, you go, what? I would never agree to that." They don't seem consistent with Medicare's Program Integrity Manual and the risk of audit from any payer is too high and not worth the hassle.

In fact, Van Zandt has approved only one use of the case-by-case exception to the two-midnight rule—which allows Part A payment even when the physician only expects a one-night stay—in three or four years.

In its publication, Livanta—a Beneficiary and Family Centered Care-Quality Improvement Organization (QIO)—explained it relies on CMS's two-midnight guidelines "to identify cases where resource utilization best justifies inpatient payment" and makes decisions based on the documentation available when the inpatient order was written. Under step 4 of the guidelines, Livanta assesses whether it was reasonable for the admitting physician to expect the patient to require medically necessary hospital services for two midnights or more, including all outpatient/observation and inpatient time. Under step 6, the QIO evaluates whether claims for patients who stayed fewer than two midnights (i.e., one night in the hospital) support the physician's determination that inpatient care was necessary based on complex medical factors (e.g., risk of an adverse event, severity of signs

and symptoms).

Livanta cited these examples of adverse events:

- metabolic abnormalities (e.g., diabetic ketoacidosis, symptomatic hyperkalemia or hypercalcemia);
- acute medical conditions (e.g., crescendo angina or life-threatening arrythmia requiring urgent intervention or high-risk medication);
- pulmonary embolism with right ventricular strain;
- acute surgical conditions (e.g., cholecystitis or appendicitis where early intervention may be associated with next-day discharge); and
- "other use of high-risk medication that can only be given on an inpatient basis."