

# Report on Medicare Compliance Volume 33, Number 10. March 18, 2024 Problems Emerge With MA Plans and Two-Midnight Rule; ‘Circular Logic Got a Foothold’

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By Nina Youngstrom

For several months, it’s been irrefutable that Medicare Advantage (MA) plans are bound by the two-midnight rule, but their compliance may be spotty, some hospitals say. There are also questions about whether MA plans are living up to other requirements of CMS’s 2024 rule on policy and technical changes to MA (CMS-4201-F).<sup>[1]</sup>

The rule, which took effect Jan. 1, requires MA plans to live by the same coverage and payment criteria as traditional Medicare, such as the two-midnight rule, inpatient-only list and case-by-case exception. MA plans also may only use internal coverage criteria in medical necessity determinations when Medicare coverage criteria isn’t “fully established.” CMS has made it abundantly clear that MA plan coverage is not allowed to be more restrictive than traditional Medicare policies found in national coverage determinations, local coverage determinations and Medicare laws.

It came as a big relief to hospitals that MA plans must be on the same two-midnight rule page as traditional Medicare, but things aren’t going as smoothly as they hoped. To push back, some hospitals are revisiting contract language, filing complaints with CMS, contemplating an exit from MA contracts and/or advocating through hospital associations.

One “point of friction” with MA plans is the concept of the two-midnight presumption, said Jerilyn Morrissey, M.D., chief medical officer for CorroHealth, at a March 13 town hall sponsored by the American College of Physician Advisors. “We hear them say they equate the two-midnight expectation with the presumption, but that’s false logic.” Some MA plans have taken the position they didn’t have to follow the two-midnight expectation because they didn’t have to follow the CMS presumption, Morrissey explained.

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