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CMS Quotes related to UR

Outpatient Services and the 2-Midnight Rule

Let's let CMS tell it in their own words:

- From the 2021 OPPS Final Rule (85 Fed. Reg. 86114), "B. Medical Review of Certain Inpatient Hospital Admissions…"

> …for purposes of determining whether the ***2-Midnight benchmark is met*** and, therefore, whether an inpatient admission is appropriate for Medicare Part A payment, we consider the physician's expectation including ***the total time spent receiving hospital care***—not only the expected duration of care after inpatient admission, but also any time the beneficiary has spent (before inpatient admission) receiving ***outpatient services, such as observation services, treatments in the emergency department, and procedures*** provided in the operating room or other treatment area.

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Outpatient Services and the 2-Midnight Rule

Let's let CMS tell it in their own words:

- From the 2021 OPPS Final Rule (85 Fed. Reg. 86114), "B. Medical Review of Certain Inpatient Hospital Admissions…"

> …while the ***time the beneficiary spent as an outpatient*** before the admission order is written is not considered inpatient time, it ***is considered during the medical review*** process for purposes of determining whether the ***2-Midnight benchmark*** was met. Pg. 742 of the display copy.
>
> …because ***time spent as an outpatient should be considered*** in determining whether there was a reasonable expectation that the ***hospital care*** would span 2 or more midnights.

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Outpatient Services and the 2-Midnight Rule

But this has been CMS' message from the start

> …if the beneficiary has already ***passed 1 midnight as an outpatient observation patient*** or in routine recovery following outpatient surgery, the physician should consider the 2-midnight benchmark met if he or she expects the beneficiary to ***require an additional midnight in the hospital.*** This means that the decision to admit becomes easier as the time approaches the second midnight, and beneficiaries in medically necessary hospitalizations ***should not pass a second midnight prior to the admission order being written.*** (FY2014 IPPS Final Rule, 78 Fed. Reg. 50946)
>
> …Because we expect that this revision ***should virtually eliminate the use of extended observation***, we also anticipate it will concurrently limit beneficiary cost-sharing for outpatient services. (FY2014 IPPS Final Rule, 78 Fed. Reg. 50946)

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Outpatient Services and the 2-Midnight Rule

But what about an inpatient level of care, doesn't the patient need to meet inpatient level of care?

…we ***do not refer to "level of care"*** in guidance regarding hospital inpatient admission decisions. Rather, we have consistently provided physicians with the aforementioned ***time-based admission framework*** to effectuate appropriate inpatient hospital admission decisions. (FY2014 IPPS Final Rule, 78 Fed. Reg. 50945)

…the beneficiary's required ***"level of care" is not part of the guidance regarding hospital inpatient admission*** decisions. Rather, we provide physicians with a 2-midnight admission framework to effectuate appropriate inpatient hospital admission decisions. (FY2014 IPPS Final Rule, 78 Fed. Reg. 50947)

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Elimination of the IPO List

Comments from the rule

…It is ***not CMS' policy to require*** services that are removed from the IPO list to only be performed in the ***outpatient*** setting. Instead, we aim to offer providers enhanced ***flexibility and choice*** in determining the safest, most efficient setting of care for Medicare beneficiaries…(CY2021 OPPS Final Rule, 85 Fed. Reg. 86087)

…It is a ***misinterpretation*** of CMS payment policy for providers to create policies or guidelines that establish the ***outpatient setting as the baseline or default site of service*** for a procedure based on…the elimination of the IPO list. (CY2021 OPPS Final Rule, 85 Fed. Reg. 86087)

…In prior rulemaking, we have stated that regardless of how a procedure is classified for purposes of payment, we expect that in every case the ***surgeon and the hospital will assess the risk*** of a procedure or service to the individual patient, taking site of service into account, and will ***act in that patient's best interests***. (CY2021 OPPS Final Rule, 85 Fed. Reg. 86092-93)

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Elimination of the IPO List

And patients needing SNF care? Don't they need three nights as an inpatient?

> … we would expect that Medicare beneficiaries who are identified as appropriate candidates to receive a surgical procedure in the ***outpatient setting*** instead of being admitted as an inpatient, ***would not be expected to require SNF care*** following surgery. Instead, we expect that many of these beneficiaries would be ***appropriate for discharge to home*** (with outpatient therapy) or ***home health care.*** (CY2021 OPPS Final Rule, 85 Fed. Reg. 86089)

Important – do not apply an outpatient presumption, admit patients with expectation of two midnight stay

- To prevent impact on three-night stay SNF requirement
- For application of 2-Midnight Presumption

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Elimination of the IPO List

Comments from the rule

> …Similar to other services that have been removed from the IPO list in previous years, ***we expect that the volume of services*** currently being performed in the inpatient setting that can be appropriately performed in the outpatient setting ***will gradually shift*** as physicians and providers gain experience furnishing these services to the appropriate Medicare beneficiaries in the HOPD. (CY2021 OPPS Final Rule, 85 Fed. Reg. 86089)

And what does *this* mean?

> …and it is equally important to note that providers are ***not required to perform services in the outpatient department*** as services are eliminated from the IPO list ***if they are not ready***. (CY2021 OPPS Final Rule, 85 Fed. Reg. 86092)

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Audit Strategy

CMS regarding the exemption:

…Whether a procedure has an exemption or not, does not change what site-of-service is medically necessary or appropriate for an individual beneficiary. ***Providers are still expected to bill in compliance with the 2-Midnight rule.*** The ***exemption*** is not from the 2-Midnight rule but from certain medical review procedures and certain ***site-of-service claim denials.*** (CY2021 OPPS Final Rule, 85 Fed. Reg. 86117)

…The ***indefinite exemption*** will help hospitals and clinicians become used to the ***availability of payment*** under both the hospital ***inpatient and outpatient*** setting for procedures removed from the IPO list. (CY2021 OPPS Final Rule, 85 Fed. Reg. 86120)

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Audit Strategy

And don't forget about the 2-Midnight Presumption

…for services removed from the IPO list, ***under the 2-Midnight presumption***, inpatient hospital claims with lengths of stay greater than ***2 midnights after admission*** will be ***presumed to be appropriate*** for Medicare Part A payment and would ***not be the focus of medical review*** efforts, absent evidence of systematic gaming, abuse, or delays in the provision of care in an attempt to qualify for the 2-Midnight presumption. (CY2021 OPPS Final Rule, 85 Fed. Reg. 86115)

Translation: inpatient lengths of stay of 2 days or greater are effectively 'exempt' from audit

- This is independent of the list of procedures removed from the inpatient only list and exempt from denial, but not audit

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Audit Strategy

In the meantime…

…It will take time for clinical staff and providers to ***gain experience*** furnishing these services to the appropriate Medicare beneficiaries ***in the HOPD*** in order to ***develop comprehensive patient selection criteria*** and other protocols to identify whether a beneficiary can safely have these procedures performed in the outpatient setting. (C2021 OPPS Final Rule, 85 Fed. Reg. 86088)

AND

…in the future, we plan to provide ***information on appropriate site of service selection*** to support physicians' decision-making. We note that these considerations will be for ***informational or educational purposes*** only and will not supersede physicians' medical judgment about whether a procedure should be performed in the inpatient or outpatient hospital setting. (CY2021 OPPS Final Rule, 85 Fed. Reg. 86088)

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Audit Strategy: Standard of Review

After elimination of the IPO list, the standard of review for all procedures will be either:

- Two-midnight benchmark; or
- Case-by-case determination

…We believe…many inpatient admissions for procedures formerly on the IPO list ***are likely to meet either the 2-midnight benchmark or the case-by-case exception*** to that benchmark mitigates the concerns regarding denial of payment under Medicare Part A for procedures no longer included on the IPO list. (CY2021 OPPS Final Rule, 85 Fed. Reg. 86088)

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Audit Strategy: Standard of Review

So what did CMS have to say about the two-midnight rule?

> ...We believe that with the elimination of the IPO list, ***the 2-Midnight benchmark will remain an important metric*** to help guide when Part A payment for inpatient hospital admissions is appropriate. With more services available to be paid in the hospital outpatient setting, it will be ***increasingly important for physicians to exercise their clinical judgment*** in determining the generally appropriate clinical setting for their patient to receive a procedure… (CY2021 OPPS Final Rule, 85 Fed. Reg. 86115)

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Audit Strategy: Standard of Review

And they reiterated the need to account for outpatient time in the two-midnight benchmark:

> …With respect to the 2-Midnight *benchmark*, however, the ***starting point*** is when the beneficiary begins ***receiving hospital care*** either as a registered outpatient or after inpatient admission. That is…we consider the ***physician's expectation*** including the ***total time spent receiving hospital care***—not only the expected duration of care after inpatient admission, but also any time the beneficiary has spent (before inpatient admission) receiving ***outpatient*** services, such as ***observation*** services, treatments in the ***emergency department***, and ***procedures*** provided in the operating room or other treatment area (CY2021 OPPS Final Rule, 85 Fed. Reg. 86114)

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Audit Strategy: Standard of Review

And what about case-by-case admission

> …we allow for case-by-case exceptions to the 2-midnight benchmark, whereby Medicare Part A payment may be made for inpatient admissions where the admitting physician ***does not expect*** the patient to require hospital care spanning ***2 midnights***, if the documentation in the medical record supports the physician's determination that the ***patient nonetheless requires inpatient hospital care.*** (CY2021 OPPS Final Rule, 85 Fed. Reg. 86087-86088

So not much in the rule…and we don't know when the 'information on site-of-service' will be published….but in prior guidance on TKA they gave at least one example…

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