Two-Midnight Rule, The NOTICE Act, and Observation

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The Two-Midnight Policy

- The Original Two-Midnight Policy (2013)
- The Revised Two-Midnight Policy (2015)
  - Short Inpatient Hospital Stays
  - Inpatient Status Reviews
- Compliance Tips
The Original Two-Midnight Policy

- FFY 2014 IPPS Rule (78 Federal Register 50495 (August 19, 2013))
  - Effective October 1, 2013
- Significant Concepts:
  - Two-Midnight Presumption
  - Two-Midnight Benchmark
  - Inpatient Status Reviews

The Revised Two-Midnight Policy

- CY 2016 OPPS Rule: (80 Federal Register 70298 (November 13, 2015))
  - Effective January 1, 2016
- Significant Changes:
  - Short Inpatient Stays
  - Inpatient Status Reviews
Short Inpatient Hospital Stays

- More Stays of Less Than Two Midnights May Be Payable Under Part A
  - If a physician’s expectation for a patient stay is less than two midnights (and the stay does not otherwise fall under an existing exception to the Two-Midnight presumption), the stay may still be payable under Part A
    - Payable on case-by-case basis based on admitting physician’s judgement
    - Documentation must support necessity of inpatient admission

Short Inpatient Hospital Stays (cont.)

- No Change For Stays Over Two Midnights
  - If the admitting physician expects the patient to require hospital care that spans at least two midnights, the services are generally appropriate for Part A payment
    - Medical record must support expectation
Inpatient Status Reviews

- **QIOs Conduct Inpatient Status Reviews**
  - Effective October 1, 2015, Quality Improvement Organizations (QIO) conduct initial medical reviews of short stay inpatient admission claims
    - QIO for California: Livanta
  - For dates of admission before December 31, 2015: Reviews based on the Original Two-Midnight Policy (2013)
  - For dates of admission on or after January 1, 2016: Reviews based on Revised Two-Midnight Policy (2015)

Inpatient Status Reviews (cont.)

- **QIOs Refer to MACs (for payment adjustments) and RACs (for further review), as appropriate**
  - RAC referrals based on patterns of practices, including:
    - High rates of claims denials after medical review
    - Failure to improve after QIO assistance
Inpatient Status Reviews

- **QIO Review: Inpatient admission order requirement**
  - Inpatient Admission Order Requirements
  - Physician Certification Requirements
    - Effective January 1, 2016: Certification required only for outlier and long stay cases (20 days or more)
- **QIO Review: Two-Midnight Benchmark**
  - Whether Two-Midnight benchmark was met or whether medical record supports that inpatient admission was appropriate (focus on medical necessity)

**QIO Review Process**

- QIOs will conduct reviews twice a calendar year using a provider sample from claims paid within the past six months
- QIOs will request medical records from provider (per Livanta, provider must produce records within 30 days of request)
  - Failure to produce: reopening of initial determination and denial
- QIOs are responsible for:
  - Conducting claim review (per Livanta, within 30 days of receipt of record)
  - Providing written correspondence regarding denials, conducting one-on-one provider education, and generating provider results letters (per CMS, provider outreach must be completed within 90 days of completion of review)
Compliance Tips

- Designate QIO Liaison
- Respond to QIO Requests
- Engage in QIO Provider Education Efforts
  - Livanta Provider Education Session

The NOTICE Act

- The NOTICE Act Requirements
- Concerns for California Providers
- Compliance Tips
The NOTICE Act

Notice of Observation Treatment and Implication for Care Eligibility Act

- Social Security Act 1866(a)(1)(Y) [42 U.S.C. Section 1395cc(a)(1)(Y)]
- Enacted August 6, 2015
- Effective August 6, 2016

The NOTICE Act Requirements

Hospitals and Critical Access Hospitals must provide notice to patients who are in the hospital under observation status for more than 24 hours.

- Specific requirements re content
- Written component and oral component
- Within 36 hours of when observation status begins or, if sooner, at discharge
Content Requirements

The required notice must explain:

- Patient’s status as an observation patient
- Implications of observation status
  - E.g., implications for cost-sharing requirements; implications for subsequent eligibility for SNF coverage
- Additional information as the Secretary deems appropriate

Delivery Requirements

The required notice must be delivered both in writing and orally

- Oral notice of the information included in the written notice
  - Documented as the Secretary determines to be appropriate
- Written notice
  - Plain language
  - In appropriate languages as determined by the Secretary
  - Signed by the patient
    - If the patient refuses, signed by the staff member who delivered the notice
Areas for Clarification

- Enforcement Efforts
  - Termination?
- Specificity of Notification
  - Standardized notification? Templates?
- Timing of Notification
  - Patients who are admitted to inpatient?
  - Patients who are admitted to inpatient and reverted to observation?

Areas for Clarification (cont.)

- Oral Notification Requirement
  - Any limitation on hospital staff that can deliver notice?
- Beneficiary Signature Requirement
  - What if patient is unable to sign?
- Overlap with State Requirements
  - Which requirement takes precedence?
Special Considerations for CA

- New requirement for California
  - No existing state law requirement for notice regarding observation
- California does not license observation units
  - Hospital must continue to meet licensing requirements for beds being used for observation

Compliance Tips

- Educate hospital staff regarding requirement
- Develop written notice template
- If already providing notice, review whether notice meets NOTICE Act requirements
Questions?

Thank you

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