



LEGAL AND REGULATORY UPDATE

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LEGAL AND REGULATORY UPDATE

- 2 MN Rule Update
- Medicare appeals environment



2 MN RULE UPDATE

- 2015 OPPS Final Rule – 79 Fed. Reg. 66770 (November 10, 2014)
 - Requirement for physician **order** to initiate an inpatient hospital admission maintained:
 - *A beneficiary becomes a hospital inpatient when admitted as such after a physician (or other qualified practitioner as provided in the regulations) orders inpatient admission in accordance with the CoPs, and Medicare pays under Part A for such an admission **if the order is documented in the medical record**. The order must be supported by objective medical information for purposes of the Part A payment determinations.* – 79 Fed. Reg. at 66997
 - Requirement for physician **certification** of the medical necessity of **all** inpatient hospital admissions overturned:
 - *Therefore, we are finalizing the policy... which limits the requirement for physician certification to long-stay (20 days or longer) and outlier cases.* - 79 Fed. Reg. at 66999

2 MN RULE UPDATE

- 2015 OPPS Final Rule
 - *Our proposed policy change regarding the physician certification requirements does not change unrelated requirements implemented in the 2014 IPPS/LTCH PPS final rule **such as the requirements related to the 2-midnight policy.*** - 79 Fed. Reg. at 66999

2 MN RULE UPDATE

- 2015 OPPS Final Rule
 - *Hospitals need to comply with all existing certification requirements until the finalized policy changes ... go into effect on **January 1, 2015**.* – 79 Fed. Reg. at 66999
 - CMS has repeatedly noted that additional certification requirements (the reason for the hospitalization, the estimated time the patient will need to remain in the hospital, and the plan of post-hospital care, if applicable) generally can be satisfied by elements routinely found in a patient's medical record such as progress notes.

MEDICARE APPEALS ENVIRONMENT

- Emerging areas of audit activity
 - MAC Probe and educate
 - Recovery Auditors permitted to re-begin auditing as of August 2014
 - Supplemental Medical Review Contractor (“SMRC”) audits
 - 2015 Office of Inspector General (“OIG”) Work Plan

MEDICARE APPEALS ENVIRONMENT

- Probe and Educate
 - Section 111 of Protecting Access to Medicare Act of 2014:
 - Permits CMS to continue medical review activities under the MAC Probe & Educate process **through March 31, 2015**
 - Prohibits CMS from allowing Recovery Auditors to conduct inpatient hospital status reviews on claims with dates of admission October 1, 2013 **through March 31, 2015**
 - Per CMS website:

All MACs have completed the first probe reviews and associated education. All MACs have begun their second probe reviews with some providers having already completed the second probe.

CMS recently instructed MACs that, time permitting and prior to the March 31, 2015 end of the Probe and Educate period, any provider who has completed the second probe and is identified as being of major concern may be subject to an additional follow up probe. **The follow up probe will include a claim sample of the same size (10 or 25 claims) as probe 1 and probe 2.**

MEDICARE APPEALS ENVIRONMENT

- SMRC
 - *Completed projects include:*
 - IRF
 - Medicare Part A inpatient services: spinal fusion
 - Medicare Part A inpatient services COPD
 - *Current projects include:*
 - Inpatient psychiatric facility services

MEDICARE APPEALS ENVIRONMENT

- 2015 OIG Work Plan:

- **New inpatient admission criteria**

We will determine the impact of new inpatient admission criteria on hospital billing, Medicare payments, and beneficiary copayments. This review will also determine how billing varied among hospitals in FY 2014. Previous OIG work identified millions of dollars in overpayments to hospitals for short inpatient stays that should have been billed as outpatient stays. Beginning in FY 2014, new criteria state that physicians should admit for inpatient care those beneficiaries who are expected to need at least 2 nights of hospital care (known as the “two midnight policy”). Beneficiaries whose care is expected to last fewer than 2 nights should be treated as outpatients. The criteria represent a substantial change in the way hospitals bill for inpatient and outpatient stays. (OEI; 00-00-00000; expected issue date: FY 2016)

MEDICARE APPEALS ENVIRONMENT

- Substantial backlog at ALJ level of appeal persists
- OMHA initiatives:
 - Statistical sampling initiative ("SSI")
 - Settlement conference facilitation ("SCF") pilot – mediation
 - *Currently limited to Part B claims*
 - OMHA Expansion (Kansas City)
- CMS initiatives:
 - CMS offer to settle pending appeals in exchange for a timely partial payment (68 percent of the net allowable amount).
 - *Deadline to request settlement was **October 31, 2014**.*



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