



American Hospital  
Association

# SPECIAL BULLETIN

Tuesday, Nov. 5, 2013

## **CMS EXTENDS PARTIAL ENFORCEMENT DELAY OF TWO-MIDNIGHT POLICY**

The Centers for Medicare & Medicaid Services (CMS) on Nov. 1 issued additional guidance related to the admission and review criteria it adopted in the fiscal year 2014 hospital inpatient prospective payment system (PPS) final rule. The additional guidance included updated instructions on the agency's [website](#) and two documents summarizing the technical directions CMS will issue to Medicare Administrative Contractors (MACs) regarding the "Probe and Educate" audits originally announced in the agency's Sept. 26 [guidance](#).

**Specifically, CMS now indicates on its website that, in general, it will not conduct post-payment patient status reviews for claims with dates of admission from Oct. 1, 2013 through March 31, 2014 – thereby extending the agency's partial enforcement delay by an additional three months.**

Other inpatient hospital reviews (e.g., coding reviews or reviews for medical necessity of a surgical procedure provided to a hospitalized beneficiary) will continue and are not impacted by this enforcement delay.

CMS reiterates the two-midnight benchmark set forth in the inpatient PPS final rule: In addition to services designated as inpatient-only, hospital stays are generally appropriate for inpatient hospital admission and payment under Medicare Part A when the physician expects the beneficiary to require a stay that crosses at least two midnights and admits the beneficiary to the hospital based upon that expectation. **CMS also states that it will work with the hospital field and with MACs to determine if there are any additional exceptions to the two-midnight benchmark that would be appropriate for inpatient admission.** However, CMS indicates that circumstances in which an inpatient admission would be reasonable in the absence of meeting the two-midnight benchmark should be rare and unusual. The agency specifically states that beneficiaries admitted for telemetry or to an intensive care unit would not be this type of rare and unusual circumstance that would justify an inpatient admission in the absence of a two-midnight expectation. Suggestions for exceptions to the two-midnight benchmark should be emailed to [IPPSAdmissions@cms.hhs.gov](mailto:IPPSAdmissions@cms.hhs.gov) with "*Suggested Exceptions to the 2-Midnight Benchmark*" in the subject line.

CMS will move forward with the prepayment “Probe and Educate” audits for inpatient admissions claims submitted by acute care inpatient hospital facilities, long term care hospitals, critical access hospitals (CAHs) and inpatient psychiatric facilities for claims with dates of admission Oct. 1, 2013 through March 31, 2014. **We are concerned that CMS now states it will audit CAHs. The agency’s previous [guidance](#) indicated it would not audit CAHs. The AHA will be seeking clarification from CMS on this issue.**

MACs will be instructed to assess the hospital’s compliance with the inpatient PPS final rule focusing on the admission order requirements, certification requirements and two-midnight benchmark. CMS will instruct MACs to focus their review efforts on those claims that do not meet the two-midnight presumption (i.e. inpatient stays spanning zero to one midnight after the beneficiary is admitted as an inpatient).

The initial probe review will be a prepayment review of 10 sample claims for most hospitals (25 claims will be selected for prepayment review for large hospitals). Based on the results of these initial reviews, MACs will conduct educational outreach efforts during the next three months. CMS states that this education will include individualized phone calls to hospitals to discuss the reasons for the denials, answer questions, and provide pertinent education and reference materials to hospitals.

Following the initial probe review, providers that are identified as having moderate/significant concerns or major concerns, will be subjected to additional probe reviews on claims with dates of admission between Jan. 1, 2014 and March 31, 2014. The number of claims reviewed will vary based on the size of the hospital and the level of concern identified by the MAC in the initial probe review. CMS also will require MACs to submit periodic reports to the agency for purposes of tracking the frequency and types of errors seen during these probe reviews.

CMS also indicates that it will update its [website](#) with additional medical review information and that an updated Q&A document will be coming soon.

**The AHA recognizes the need for CMS’s new guidance regarding the two-midnight policy and the “Probe and Educate” audits that will be conducted by MACs. However, it lacks clarity, is inconsistent with previous guidance set forth by the agency, and raises new questions with regard to enforcement of the two-midnight policy. Additionally, even with this extended partial delay, hospitals do not have enough time to operationalize the two-midnight policy. AHA will continue to pursue delayed enforcement**

**of the two-midnight policy until Oct. 1, 2014 and seek additional clarifications from CMS.**

If you have further questions, contact Priya Bathija, AHA senior associate director of policy, at (202) 626-2678 or [pbathija@aha.org](mailto:pbathija@aha.org).