

# OTTENWESS, ALLMAN & TAWEEL, PLC

ATTORNEYS AT LAW

---

David M. Ottenwess  
Christopher J. Allman  
A. Tony Taweel  
Stephanie P. Ottenwess  
Matthew A. Schenk  
Joseph A. Campbell

The Buhl Building  
535 Griswold, Suite 850  
Detroit, MI 48226  
(313) 965-2121  
(313) 965-7680

Of Counsel  
Hon. Thaddeus G. McCotter  
—  
Papista & Papista, PLC

## **CLIENT ALERT**

### **Inpatient Admission Issues You Should Know About**

October 17, 2013

The Centers for Medicare & Medicaid Services (CMS) recently released a variety of rules and guidelines under the 2014 Inpatient Prospective Payment System (IPPS) that affect the way hospitals may admit inpatients under Medicare Part A. The rules include the “two midnight” rule and the requirements for physicians, or non-physician practitioners (i.e., physician assistants or nurse practitioners) to admit patients to a facility. Familiarity with the admission issues that can stem from the FY 2014 IPPS are critical, as they affect hospitals with respect to their ability to receive appropriate reimbursement and admitting practitioners who must revise their policies and procedures in order to meet the new documentation requirements.

#### **The “Two Midnight” Rule**

In August 2013, CMS released the IPPS Final Rule for the FY 2014. The Final Rule included what is commonly known as the “two midnight” rule which went into effect on October 1, 2013. This rule states that in order for a hospital admission to qualify for appropriate payment under Medicare Part A, the physician’s expectation for the admission must be that the patient’s stay will span at least two midnights. In brief, the expectation is that a patient’s stay in the hospital for surgical procedures, diagnostic tests and other treatment must span at least two midnights in order to meet the criteria for payment under Part A<sup>1</sup>. Moreover, any hospital stay that spans less than two midnights are not appropriate for Part A inpatient coverage and should be billed under the observation rules.

From an auditing standpoint, when auditing medical necessity, CMS’s recovery audit contractors (RACs) will presume that the occurrence of two midnights after formal inpatient hospital admission indicates an appropriate in patient status for a medically necessary claim. However, if the occurrence of two midnights after formal inpatient hospital admission does not occur, claims for such admissions will receive a higher level of scrutiny by the RACS.

The Final Rule also emphasizes the requirement for a formal order for inpatient admission, including physician certification of the inpatient admission. More specifically, the Final Rule requires that a practitioner’s

---

<sup>1</sup> The rules for procedures designated as “inpatient only” previously by Medicare remain the same, regardless of the length of stay.

order must now include the specific physician’s decision to “admit to inpatient”, or “admit as an inpatient” or “for inpatient services”, or similar language, in order to be appropriate.

In guidance released on September 5, 2013, CMS clarified the requirements for physician certification of the inpatient order to include the following:

- Authentication of the practitioner order, including a certification that inpatient services are ordered in accordance with the Medicare regulations. This specifically includes a certification that the inpatient services ordered are reasonable and necessary;
- The reasons the inpatient services are required;
- The estimated time the patient requires to be in the hospital;
- The plans for post-hospital care, if appropriate; and,
- For Community Access Hospitals (CAH) – the physician must certify that the patient may be reasonably expected to be discharged or transferred to a hospital within 96 hours of their admission to the CAH.

The Final Rule further contains the requirement that the certification must be completed, signed, dated and documented in the medical record prior to the patient’s discharge, except for certain outlier cases.

Finally, the Final Rule defines who has the authority to sign the certification (or recertification) of inpatient admission. It states that the certification must be signed by the physician responsible for the case, or by another physician who has knowledge of the case who is authorized by the physician responsible for the case. Additionally, the certification may only be signed by:

- An M.D. or D.O.;
- A dentist (in certain circumstances); or,
- A podiatrist, if authorized by state law.

### **Who Can Order an Inpatient Admission?**

Under the 2014 IPPS, the order of admission may be provided by a physician or other practitioner who is (a) licensed by the State to admit inpatients to hospitals, (b) granted privileges by the hospital to admit inpatients to that specific facility, and (c) is knowledgeable about the patient’s course of hospital treatment, medical plan of care, and current condition at the time of the admission. As described above, the practitioner’s order must include the specific physician’s decision to “admit to inpatient”, or some similar language. Additionally, the order must be furnished at, or before<sup>2</sup>, the time of the inpatient admission.

### **Delaying Audits of the “Two Midnight” Rule**

In late September, CMS announced that for a period of 90 days, it will not allow RACs to review the medical necessity of inpatient admissions of one midnight or less in order to allow providers to get used to the new rules. The “two midnight” rule went into effect on October 1, 2013 (the first day of the government FY 2014). Therefore, scrutiny by the RACs of the medical necessity of inpatient stays that do not meet the “two

---

<sup>2</sup> i.e., for a pre-scheduled surgery. Even if the inpatient admission order is written in advance, the admission does not occur until the patient’s formal admission.

midnight” rule will be delayed until December 31, 2013. However, the Medicare Administrative Contractors (MACs), who make the initial determination regarding whether or not a Medicare claim will be paid, will still be allowed to review a sample of up to 25 claims per hospital. If irregularities are apparent, the MAC can still deny the claims within that sample and conduct education for hospital compliance with the new rules.

### **Importance to Admitting Physicians**

Although the Final Rule governs inpatient admissions and payments to hospitals, physicians who admit patients to hospitals necessarily play a critical role and must bring changes about at their own facilities. Providers with admitting privileges and health care practitioners who document admission orders and progress notes must become well educated in the new documentation requirements which are now in effect.

If you have questions regarding these changes to the IPPS and inpatient admission rules for FY 2014, or any health law matter, please contact Christopher Allman at [callman@ottenwesslaw.com](mailto:callman@ottenwesslaw.com), or Stephanie Ottenwess at [sottenwess@ottenwesslaw.com](mailto:sottenwess@ottenwesslaw.com).

### **OTTENWESS, ALLMAN & TAWHEEL, PLC**

The Buhl Building  
535 Griswold Street, Suite 850  
Detroit, MI 48226  
(313) 965-2121 - Fax: (313) 965-7680  
<http://www.ottenwesslaw.com>