



Hospitals Initiate Challenge to the Two-Midnight Rule

Jennifer D. Burgar and Keith A. Mauriello

With the support of state hospital associations and the American Hospital Association, at least four hospitals have initiated what should become a challenge to the relatively recent “two midnight” rule adopted by the Centers for Medicare & Medicaid Services (CMS).

In brief, the two-midnight rule was implemented by CMS as part of the 2014 inpatient prospective payment system (IPPS) final rule. Effective October 1, 2013, the rule essentially limits Medicare reimbursement for inpatient admissions to patient stays spanning at least two midnights. Auditors reviewing claims have been instructed by CMS to presume that stays lasting two midnights or longer are reasonable and necessary and will qualify for higher payment under Medicare Part A (the stays will still ultimately need to be justified by the hospital). However, stays lasting less than two midnights will not be presumed to qualify as inpatient stays and instead will generally be paid under Medicare Part B, which covers outpatient services.

CMS issued the rule, at least in great part, in an attempt to limit the use of lengthy observation admissions that can prove costly for Medicare beneficiaries. CMS anticipates that the shift from observation stays to inpatient stays will increase Medicare expenditures by approximately \$220 million. As an offset, CMS instituted a 0.2% reduction to the operating IPPS standardized amount, the hospital-specific rate, and the national capital Federal rate.

As a first step to challenging the broader two-midnight rule, on January 22, 2014, the hospitals, located in Arizona, North Carolina, Pennsylvania, and New York, filed appeals with the federal Provider Reimbursement Review Board (PRRB) seeking expedited judicial review of the hospitals’ claims that the 0.2% reduction is unlawful. Among other things, the hospitals contend that the payment reduction is arbitrary and capricious and failed to comply with the Administrative Procedure Act’s requirements for notice and comment.

In tandem with the judicial challenge, two Congressmen (Gerlach (R-PA) and Crowley (D-NY)) have issued proposed legislation that would delay the two midnight rule until October 1, 2014 and would require CMS to create a separate category of short inpatient stays by 2015.

While the judicial challenge and proposed legislation wind through the courts and the legislative process, hospitals should consider preserving their right to challenge the reimbursement cuts by including the reduction amounts as protested items on their cost reports with admissions beginning October 1, 2013.

Authors and Contributors

Jennifer D. Burgar
Of Counsel, Atlanta Office
404.873.8194
jennifer.burgar@agg.com

Keith A. Mauriello
Partner, Atlanta Office
404.873.8732
keith.mauriello@agg.com

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Atlanta Office
171 17th Street NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office
1775 Pennsylvania Ave., NW,
Suite 1000
Washington, DC 20006

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