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### UPIC Reportedly Denies Some Inpatient Claims Using Criteria Pre-Dating Two-Midnight Rule

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By Nina Youngstrom

Eight years after the two-midnight rule took effect, a unified program integrity contractor (UPIC) is reportedly denying claims for inpatient stays at some hospitals based on pre-2014 admission criteria, an attorney said. The UPIC, CoventBridge, has forwarded the claims to their Medicare administrative contractor (MAC) for recoupment on the grounds that the documentation doesn't support an inpatient level of care for the patients or the requisite severity of illness or intensity of services. These are outdated regulatory requirements from the days before the implementation of the two-midnight rule, experts said.

"I have seen too many sets of UPIC results from CoventBridge where they don't apply the two-midnight rule," said attorney David Glaser, with Fredrikson & Byron in Minneapolis. They have audits in process with several more hospitals, he said. "What is troubling to me" is CMS changed the standard for inpatient admission "with so much fanfare," and "they created this regulation to deal with the fact there was so much ambiguity in the regulation." A fundamental misinterpretation by a major program integrity contractor is worrisome, Glaser noted. The hospitals in some cases were told to self-audit for additional errors because the error rate is so high.

The UPIC's apparent misapplication of the two-midnight rule also looms large because UPICs generally have greater power than ever over claims denials and investigations affecting health care organizations, lawyers said. Sweeping changes to the *Medicare Program Integrity Manual* that took effect Oct. 12 will make UPICs more of a force to be reckoned with, and providers will feel it with voluntary repayments, exclusions and other areas related to fraud, waste and abuse.<sup>[1]</sup>

### Focus on Hospital Care, Not Level of Care

The two-midnight rule is based on the physician's expectation of the patient's length of stay in the hospital.<sup>[2]</sup> Level of care is an antiquated concept in Original Medicare, said Ronald Hirsch, M.D., vice president of R1 RCM. While the intensity of services and severity of illness are useful as a screening tool in terms of whether the patients should be in the hospital at all and when it's appropriate to discharge them, they're irrelevant to the calculus of inpatient or outpatient, Hirsch said. CMS came at admission with an entirely different mindset when it created the two-midnight rule, and the more important binary became hospital care or not. The 2014 regulation states that the "medical decision is the choice to keep the beneficiary at the hospital in order to receive services or reduce risk, or discharge the beneficiary home because they may be safely treated through intermittent outpatient visits or some other care."

In other words, physicians decide whether patients require hospital care, and when the answer is yes, they determine for how long. If there's an expectation patients will cross the two-midnight threshold, they're inpatients. "That's the crux of the two-midnight rule," Hirsch explained. CMS also added a case-by-case exception, which allows Part A payment for certain inpatient admissions when physicians document complex medical factors, such as history and comorbidities, even though they don't expect patients to stay two midnights.

Although admission screening tools, such as InterQual and MCG, that address severity of illness and intensity of services may help with decisions about the need for hospital care and stability for discharge, CMS doesn't require their use.

But it doesn't seem like the UPIC got that very old memo, Glaser and Hirsch said. In one letter to a hospital, CoventBridge wrote that "the provider's documentation did not support that an inpatient level of care was required to observe the recipient's symptoms. The provider's documentation did not include any other abnormalities that would require an inpatient level of care as opposed to monitoring and observation at the outpatient level. The documentation submitted does not support the severity of illness or intensity of service for an inpatient admission; therefore, this claim is denied."

Glaser noted that "the level of care for inpatient and outpatient care is the same. They are both hospital care, and if the patient needs hospital care for two midnights, they are an inpatient."

Hirsch said "it boils my blood" to hear "that a Medicare contractor that's paid millions of dollars to know regulations" may be "using a definition made obsolete in 2013."

CoventBridge didn't respond to a request for comment and referred RMC to CMS, which didn't answer questions about the UPIC's two-midnight rule audits by press time.

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