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2014 IPPS Final Rule Establishes New Requirements for Physician Documentation in Hospitals

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On August 2, 2013, the Centers for Medicare & Medicaid Services (“CMS”) published its [2014 Inpatient Prospective Payment System \(“IPPS”\) Final Rule](#) (the “2014 IPPS Final Rule”), which will become effective on October 1, 2013.^[i] One of the most significant aspects of the 2014 IPPS Final Rule is that it “clarifies” CMS coverage criteria for Part A inpatient hospital claims, in particular by creating requirements for physician orders and certifications and by establishing new guidelines to justify and document the medical necessity of inpatient hospital admissions under Part A. The purpose of this Member Alert is to provide our Interest Group with information related to the ways in which the 2014 IPPS Final Rule will impact the day-to-day practice of physicians admitting patients to hospitals to receive inpatient care.

1. Physician orders and certifications

In the 2014 IPPS Final Rule, CMS finalized its proposal to establish that, “For purposes of payment under Medicare Part A, an individual is considered an inpatient of a hospital, including a critical access hospital, if formally admitted as an inpatient pursuant to an order for inpatient admission by a physician or other qualified practitioner...” The physician order must be present in the medical record and supported by the admission notes and progress notes in order for a Medicare Part A claim to be paid.^[ii] Contrary to guidance previously published,^[iii] the 2014 IPPS Final Rule clarifies that an admission order must expressly document the admitting physician’s intent to order inpatient status for the beneficiary.^[iv] An admission order may be made verbally or in writing. CMS will provide additional guidance regarding its expectations of verbal orders by way of sub-regulatory guidance.^[v]

The 2014 IPPS Final Rule also creates a requirement for physician certifications of inpatient admissions meeting the requirements of 42 C.F.R. § 424.14.^[vi] Although commenters to the 2014 IPPS Proposed Rule argued that the requirement for certifications for admissions other than extended hospital stays is not supported by the legislative history of the statute and regulations, CMS found these arguments unpersuasive. As a practical matter, physicians admitting patients to the hospital typically have completed orders to do so, but it has not been the standard of practice to complete a certification document for every inpatient admission. This is a condition of payment under the 2014 IPPS Final Rule, and therefore physicians must be educated regarding and abide by this requirement.

With respect to orders, as finalized, 42 C.F.R. § 412.3(a) will read as follows:

For purposes of payment under Medicare Part A, an individual is considered an inpatient of a hospital, including a critical access hospital, if formally admitted as an inpatient pursuant to an order for inpatient admission by a physician or other qualified practitioner in accordance with this section and §§ 482.24(c), 482.12(c) and 485.638(a)(4)(iii) of this chapter for a critical access hospital. This physician order must be present in the medical record and be supported by the physician admission and progress notes, in order for the hospital to be paid for hospital inpatient services under Medicare Part A...^[vii]

With respect to certifications, as finalized, 42 C.F.R. § 424.13(a)(2) will require the following:

(a) *Content of certification and recertification.* Certification begins with the order for inpatient admission. Medicare Part A pays for inpatient hospital services (other than inpatient psychiatric facilities services) only if a physician certifies and recertifies the following:

- (1) That the services were provided in accordance with § 412.3 of this chapter
- (2) The reasons for either –
 - i. Hospitalization of the patient for inpatient medical treatment or medically required inpatient diagnostic study; or
 - ii. Special or unusual services for cost outlier cases (under the prospective payment system set forth in subpart F of Part 412 of this chapter).^[viii]

The physician order is a required component of the certification^[ix] and must be made at the time of a beneficiary's admission to the hospital.^[x] The certification must be signed and documented in the medical record prior to the hospital discharge.^[xi] For purposes of efficiency, it would make practical sense for admitting physicians to complete the order and certification contemporaneously at the time of admission.

CMS views the regulatory requirements as “clarifications,”^[xii] and specifically notes, “[W]e are not finalizing any new documentation requirements.”^[xiii] However, CMS is also requiring that the certification be documented via a separate signed statement within the medical record (except for delayed certifications),^[xiv] and payment for a Part A claim will be tied to the physician's documentation supporting the order and certification generally. Therefore, it is essential that admitting physicians and hospitalists are educated regarding CMS' “clarified” requirements, in order to ensure that payment is made for the medically necessary care provided.

2. Establishing and Documenting the Medical Necessity of an Inpatient Admission

In the 2014 IPPS Final Rule, CMS also finalized criteria to establish and document the medical necessity of an inpatient admission. In particular, CMS finalized its proposal that an inpatient admission would be generally deemed appropriate and payment made under Medicare Part A when the physician expects a patient to require a stay that crosses at least 2 midnights and admits the patient to the hospital based on that expectation, or if the patient is undergoing a procedure on the Inpatient-Only list.^[xv] Note that the 2014 IPPS Final Rule does not include exceptions to this standard based on the intensity of services rendered: “[O]ur 2-midnight benchmark policy is not contingent on the level of care required.”^[xvi] It may seem counterintuitive that, under the 2014 IPPS Final Rule, the determination whether an inpatient status is medically necessary is not based on the level of care to be provided. Even if industry guidelines (e.g., InterQual Level of Care guidelines or Milliman Care Guidelines) are satisfied, if the patient does not undergo a procedure on the Inpatient-Only list or the patient's hospital stay is not expected to span 2 midnights, then it is CMS' position that an inpatient admission is not medically necessary, even if care is rendered in an Intensive Care Unit.

The 2014 IPPS Final Rule, CMS relays its intent to direct its medical review contractors to focus auditing efforts on inpatient hospital admissions with lengths of stay crossing 1 midnight or less:

If the physician admits the beneficiary as an inpatient but the beneficiary is in the hospital for less than 2 midnights after the order is written, CMS and its medical review contractors will not presume that the inpatient hospital status was reasonable and necessary for payment purposes, but may instead evaluate the claim pursuant to the 2-midnight benchmark. Medical review contractors will (a) evaluate the physician order for inpatient admission to the hospital, along with the other required elements of the physician certification, (b) the medical documentation supporting the expectation that care would span at least 2 midnights, and (c) the medical documentation supporting a decision that it was reasonable and necessary to keep the patient at the hospital to receive such care, in order to determine whether payment under Part A is appropriate...

[I]f it was reasonable for the physician to expect the beneficiary to require a stay lasting 2 midnights, and that expectation is documented in the medical record, inpatient admission is generally appropriate, and payment may be made under Medicare Part A; this is regardless of whether the anticipated length of stay did not transpire due to unforeseen circumstances...”^[xxi]

In the 2014 IPPS Final Rule, CMS places great emphasis on the physician’s documentation regarding his or her expectation of a patient’s length of stay. Therefore, it is essential that all hospital physicians are educated regarding the heightened importance of documentation within the medical record. Compliance with the 2014 IPPS Final Rule may involve the adoption of new forms (e.g., Admission Order / Certification forms), and must involve thorough documentation of the need for inpatient hospital services, the physician’s expectations regarding length of stay, and rationale for the physician’s opinion.

^[i] See Display version of 2014 IPPS Final Rule, available at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/FY-2014-IPPS-Final-Rule-Home-Page-Items/FY-2014-IPPS-Final-Rule-CMS-1599-F-Regulations.html?DLPage=1&DLSort=0&DLSortDir=ascending>.

^[iii] 2014 IPPS Final Rule at pp. 1782-1783.

^[iii] See CMS Transmittal 107, Change Request 6492, “July 2009 Update of the Hospital Outpatient Prospective Payment System (OPPS),” May 22, 2009, finding “The term ‘admission’ is typically used to denote an inpatient admission and inpatient hospital services.”

^[iv] 2014 IPPS Final Rule at 1797.

^[v] *Id.* at 1793.

^[vi] *Id.* at pp. 1782-1783.

^[vii] *Id.* at 1788.

^[viii] *Id.* at 1789.

^[ix] *Id.* at 1790.

^[x] *Id.* at pp. 1796-1797.

^[xi] *Id.* at 1791.

^[xii] See e.g., *id.* at 1789.

^[xiii] *Id.* at 1789.

^[xiv] *Id.* at 1790.

^[xv] *Id.* at 1840.

^[xvi] *Id.* at 1816.

^[xxi] *Id.* at 1831.