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CMS Proposes Changes to Inpatient Admission Orders in 2019 IPPS Proposed Rule

On April 24, 2018, the Centers for Medicare & Medicaid Services (CMS) released the Fiscal Year (FY) 2019 Inpatient Prospective Payment System (IPPS) Proposed Rule (CMS-1694-P). Among other changes, CMS proposes eliminating its regulatory requirement that a written inpatient admission order be present in the medical record as a specific condition of Medicare Part A payment. This is one of many changes that CMS has made or proposed over the last several years in connection with the Two Midnight Rule implementation and associated documentation requirements. Notably, although this proposal does not negate CMS's policy that the medical record must support the inpatient admission, this proposal, if finalized, would likely reduce the denial of medically necessary inpatient admissions for reasons solely related to technical deficiencies in inpatient admission orders.

OVERVIEW OF INPATIENT ADMISSION ORDER REQUIREMENTS

CMS implemented sweeping changes to its inpatient admission coverage standards and documentation requirements through the implementation of the Two Midnight Rule in the FY 2014 IPPS Final Rule (CMS 1599-R), effective October 1, 2013. One of those changes involved specific inpatient admission order requirements.

Before the implementation of the Two Midnight Rule, there was no regulation or other written guidance that clearly stated that a qualified practitioner's order for inpatient admission was required as a condition of Medicare payment. In past practice, the lack of an inpatient admission order could often be overcome in the claims review process by other documentation in the medical record which indicated that the physician or other qualified practitioner intended the patient to be admitted and treated as an inpatient. However, when CMS implemented the Two Midnight Rule, the agency also changed the regulations at 42 C.F.R. § 412.3 to explicitly require that the inpatient admission order be documented in the medical record as a condition of Medicare Part A payment, effective October 1,



2013. The provider industry provided numerous comments and raised potential concerns regarding this new requirement.

Subsequently, CMS issued sub-regulatory guidance that provided additional detail regarding the technical requirements for inpatient admission orders.¹ One of those requirements was that the inpatient order be authenticated prior to patient discharge, which was often challenging for providers, particularly in the case of short inpatient stays. Prior to the Two Midnight Rule, CMS required that orders be authenticated promptly in accordance with State law, including scope-of-practice laws, hospital policies, and medical staff bylaws, rules, and regulations, and that medical records be completed within 30 days of patient discharge. These pre-Two Midnight Rule order authentication requirements were included in relevant Medicare Conditions of Participation.² Accordingly, CMS's policy that inpatient admission orders be authenticated prior to discharge was inconsistent with many State laws and long standing physician practices, as well as the configuration and design of electronic medical record platforms. Many providers invested in significant training and processes to facilitate compliance with CMS's inpatient admission order requirement, such as re-working electronic medical record systems to create hard stops that would prevent a patient from being discharged without a signed inpatient admission order.

To a certain extent, CMS appeared to acknowledge these challenges and stated in sub-regulatory guidance that it would allow its contractors to consider the written order requirement to be fulfilled in the case of defective or missing written orders where it is clear in the medical record that the ordering practitioner intended to admit the beneficiary as an inpatient.³ Nevertheless, Medicare Administrative Contractors (MACs) and Quality Improvement Organizations (QIOs) charged with reviewing patient status claims continued to issue denials based on technical inpatient admission order deficiencies for otherwise medically necessary inpatient stays. Despite continued provider concerns regarding CMS's inpatient admission order requirements, CMS declined to address changes to its regulations *until* the 2019 IPPS Proposed Rule, nearly five years after the requirement was first implemented.

OVERVIEW OF CMS'S PROPOSED CHANGES TO INPATIENT ADMISSION ORDER REQUIREMENTS

In the 2019 IPPS Proposed Rule, CMS proposes to revise its admission order documentation requirements by removing the regulatory language at 42 C.F.R. § 412.3(a) stating that a physician (or other qualified practitioner) 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.⁴ Notably, CMS is not proposing any changes to the Two Midnight Rule itself. These inpatient admission standards will remain in force.

The proposed change to the written inpatient admission order requirement is intended to reduce the burden on providers and prevent denials based solely on technical inpatient admission order deficiencies. Specifically, CMS explains that "it has come to our attention that some otherwise medically necessary inpatient admissions are being denied payment due to technical discrepancies with the documentation of inpatient admission orders" such as "missing practitioner admission signatures, missing co-signatures or authentication signatures, and signatures occurring after discharge."⁵ CMS hopes that its proposed change will have the impact of focusing future medical reviews on "whether the inpatient admission was medically reasonable and necessary rather than occasional inadvertent signature documentation issues unrelated to the medical necessity of the inpatient stay."⁶

Importantly, however, CMS is clear that its proposal does **not** change its requirement that an individual is considered an inpatient if formally admitted as an inpatient under an order for inpatient admission.⁷ Accordingly, CMS is not removing the inpatient admission order requirement altogether; instead, CMS proposes to eliminate its regulatory requirement



that a written inpatient admission order be present in the record as a condition of payment. Essentially, CMS's proposal would revert back to inpatient admission order standards that existed prior to October 1, 2013.

PRACTICAL CONSIDERATIONS

As noted above, if CMS's proposal is finalized, inpatient admission orders will remain key documentation supporting inpatient admission stays. Providers would be well advised to attempt to include in the medical record a completed inpatient admission order authenticated by the admitting practitioner for each inpatient stay to further support the medical necessity of the inpatient services. However, if an inpatient admission order is missing, unsigned or deficient in some other way, a claim may still be appropriate for Part A payment if the rest of the medical record supports the inpatient admission pursuant to the Two Midnight Rule and the "case-by-case" exception.

CMS's proposed change would also undermine the requirement that an inpatient admission order be authenticated *prior to discharge* for Medicare Part A payment (although the Medicare Conditions of Participation still require orders to be authenticated promptly).⁸ CMS's prior-to-discharge requirement was articulated in sub-regulatory guidance and not federal regulations, yet many providers experienced denials of inpatient admissions simply due to untimely signatures on inpatient admission orders. If CMS's proposal is finalized, such denials should cease. Of course, providers would still need to abide by Medicare Conditions of Participation, applicable State law and medical staff rules and their requirements for authentication of inpatient admission orders.

Although CMS does not state when the proposed change would take effect, it is likely that the proposed change would apply to discharges on or after October 1, 2018. If CMS's proposal is finalized, providers should not experience denials from QIO contractors based solely on alleged inpatient admission order deficiencies for dates of service after the change is effectuated. CMS's contractors have long struggled with conducting reviews that accurately apply the Two Midnight Rule, so it will be important for providers to monitor future contractor reviews to ensure that the contractors are applying CMS's standards appropriately. Further, since the written inpatient admission order requirement still applies to discharges before the effective date of any change, one would expect CMS to use its enforcement discretion to instruct QIO contractors not to disapprove medically necessary inpatient stays during prior time periods merely due to a technical flaw in the written order. In addition, providers would be well advised to ensure that any changes finalized are consistent with their internal review policies and processes. Further, although there is no indication that this change would apply retroactively, CMS's commentary that they did not intend for their regulatory inpatient admission order requirement to result in solely technical denials may be helpful support for providers handling pending appeals. Finally, this change and CMS's comments may also have important implications for providers facing additional scrutiny and patient status reviews under Corporate Integrity Agreements or those providers defending False Claims Act allegations in connection with inpatient admissions.

Comments are due regarding CMS's proposal on June 25, 2018. For additional information, please watch for an announcement regarding an upcoming King & Spalding webinar on the 2019 IPPS Proposed Rule.



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¹ Hospital Inpatient Admission Order and Certification, CMS (Jan. 30, 2014).

² 42 C.F.R. §482.24.

³ Hospital Inpatient Admission Order and Certification, CMS (Jan. 30, 2014).

⁴ CMS-1694-P.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 42 C.F.R. §482.24.