OPERATOR INSIGHTS

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Out of the Dark:
Breaking Down the Two-Midnight Rule

In one of its rarer moments, the government, specifically the Centers for Medicare & Medicaid Services (CMS), tried to simplify one of its regulations. The status of a hospitalized patient (inpatient versus outpatient) was confusing to patients and doctors alike. So, effective October 1, 2013, CMS put into effect the now famous "Two-Midnight Rule". I mean, how much simpler could it be? Staying two midnights means inpatient, right? Unfortunately, to this day, hospitals and doctors still are confused by this "simple" rule. Ensemble's Physician Advisors have put together this guide explaining one of the most impactful rules effecting hospital's financial and compliance well-being.

The two-midnight rule applies only to traditional, fee-for-service **Medicare**. Commercial payers (including Medicare Advantage plans) do not follow the two-midnight rule.

Inpatient admission status is appropriate if, at the time of admission, the admitting physician expects the patient to require medically necessary hospital care that crosses two midnights (including the time spent in the ED receiving care after the initial triage).

The starting point for the Two Midnight timeframe is when the patient starts receiving services following arrival at the hospital, excluding the initial waiting room wait and routine triage time.

The Centers for Medicare & Medicaid Services (CMS) simply define hospital care as "care that can only be delivered in the hospital" (and cannot be safely provided in an outpatient setting like home, clinic, or nursing facility).

When the expected hospital stay is less than two midnights or uncertain at presentation, starting with Outpatient Observation is appropriate, with upgrade to Inpatient status recommended as soon as the need for a second medically necessary midnight becomes clear. The first midnight spent in Observation does count toward meeting the two-midnight benchmark. The fact that the patient remains in the hospital past two midnights does not automatically justify Inpatient status; the time spent in the hospital must be medically necessary.

Delays in care (e.g. due to social reasons, testing availability on the weekend) should not be counted toward the two midnights.

Exceptions to the Two Midnight Rule – when Inpatient status is still appropriate even if the patient does not complete two midnights in the hospital:

- Inpatient-only procedures should always be performed as Inpatient and have no length of stay requirements (may be short stays).
- Intubation and mechanical ventilation initiated during present hospitalization (not just BiPAP/CPAP use; elective intubation for procedures is excluded).
- Physician-identified case-by-case exception to the two-midnight rule (in rare and unusual cases, the physician may determine that the patient warrants Inpatient admission in the absence of a two-midnight presumption at the time of admission).
- Unforeseen circumstances/events interrupting the otherwise reasonable initial two-midnight expectation. Such events (or "exceptions") may include:
    - unanticipated transfer to another hospital,
    - unexpected death,
    - unexpected departure against medical advice,
    - unexpectedly rapid clinical improvement,
    - decision to pursue hospice/comfort care instead of continued active treatment.

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