Two-Midnight Rule, Condition Code 44 and MOON Form: Auditing Your Way to Compliance

HCCA Regional Compliance Conference
January 19, 2018

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Who is Cone Health?
• 6 Hospitals – 1254 beds
• 149 Outpatient locations, including physician practices
• 3 Outpatient Surgical Centers
• 5 Emergency Departments
• 4 Urgent Care Centers
• 12,000 Employees
• 1,500 Physicians
• 1,200 Volunteers

Audit & Compliance Services at Cone Health
VP Audit and Compliance
Chief Compliance & Privacy Officer
Facility Compliance
Internal Audit
Practice Compliance
Privacy
Why audit?

Agenda

- Review Two-Midnight Rule (2MN), Condition Code 44, and the Medicare Outpatient Observation Notice (MOON) Regulations
- Highlight the identified risks
- Tools, tips, and tricks for conducting your audit
- Internal Audit & Facility Compliance Collaboration
  - Planning
  - Audit Tool
- Producing a final report
- Questions

Two-Midnight Rule

On October 01, 2013 CMS adopted the Two-Midnight Rule (2MN). This rule established Medicare policy regarding the benchmark criteria that should be used when determining whether inpatient admission is reasonable and payable under Medicare Part A. In general, the Two-Midnight Rule states that inpatient admissions will generally be payable under Medicare Part A if the admitting practitioner expected the patient to require a hospital stay that crossed two midnights and if the medical record supports that expectation.
The Notice of Observation Treatment and Implication for Care Eligibility Act (NOTICE Act) was enacted on August 6, 2015 and implemented on March 08, 2017. The NOTICE Act requires “hospitals and Critical Access Hospitals to provide notification to individuals receiving observation services as outpatients for more than 24 hours explaining the status of the individual as an outpatient, not an inpatient, and the implications of such status.” Notification is accomplished and documented by utilization of the Medicare Outpatient Observation Notice (MOON) form created and provided by CMS.

MOON Form

Mandated by NOTICE Act
Effective March 08, 2017
Provides oral and written notification to observation patient with stay > 24 hours
Delivery required by hour 36 of stay
Explains the implication of status
Edits to CMS MOON form limited
Signature required

MOON Form
MOON form is available at https://www.cms.gov

Condition Code 44
CMS implemented a new condition code, issued by the National Uniform Billing Committee, in 2004. Condition Code 44 (CC 44) is for use on outpatient claims, when the physician ordered inpatient services, but upon internal review, the hospital determined the services did not meet inpatient criteria. When the hospital has determined that it has met the requirements for CC 44 the entire episode of care should be treated as though the inpatient admission never occurred. Submission of an outpatient claim for medically necessary Medicare Part B services is allowed.

Condition Code 44 effective April 1, 2004
Inpatient status changed to Observation because it did not meet inpatient admissions criteria
Only submit medically necessary Part B services for payment
Entire episode of care treated as if the inpatient admission never occurred
Condition Code 44 should “become increasingly rare” (MLN Matters SE0622)
2MN Rule, CC44, MOON
Compliance Risks

<table>
<thead>
<tr>
<th>External</th>
<th>Internal</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Noncompliance with Code of</td>
<td>• EMR technical issues</td>
</tr>
<tr>
<td>Federal Regulations</td>
<td>• Lack of or inadequate Policy</td>
</tr>
<tr>
<td>• Noncompliance with CMS’s</td>
<td>and Procedure</td>
</tr>
<tr>
<td>Guidance</td>
<td>• Noncompliance with existing</td>
</tr>
<tr>
<td>• Possible recoupment</td>
<td>Policy and Procedures</td>
</tr>
<tr>
<td>• Potential fines</td>
<td>• Gaming</td>
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<tr>
<td>• Gaming</td>
<td>• Provider judgement</td>
</tr>
<tr>
<td>• Audit by the Medicare</td>
<td>• Deficient provider</td>
</tr>
<tr>
<td>Beneficiary and Family</td>
<td>documentation</td>
</tr>
<tr>
<td>Centered Care (BFCC)</td>
<td>• Possible recoupment</td>
</tr>
<tr>
<td>Quality Improvement</td>
<td>• Failure to maximize revenue</td>
</tr>
<tr>
<td>Organization (QIO)</td>
<td></td>
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</tbody>
</table>

Check - In

Review 2 MN Rule, MOON Form, & Condition Code 44

Review External and Internal Compliance Risks

Up Next:
It’s time to begin the planning steps of your audit:
• Research
• Brainstorming
• Risk Assessment
  • Walkthroughs
  • Internal Controls
  • Analytics

Planning - Research

1. Research, Research, Research
   • CMS documents & Code of Federal Regulations
   • Industry Organizations (i.e. HCCA)
   • Policies and Procedures

2. Identify the responsible internal stakeholders
   • Compliance
   • Providers
   • Care Management
   • Utilization Review
   • Legal
   • Health Information Management
   • Revenue Integrity
   • Patient Accounting
   • Information Systems
   • EMR Trainers and Support
Planning – Brainstorming

Purpose:
The brainstorming environment fosters an uninhibited, non-judgmental explosion of ideas, concepts, decisions, and strategies. In brainstorming, all contributions are valid, and the key to a successful session is to share as many ideas as possible without evaluating them.

Include:
- Compliance managers and staff
- Internal Audit managers and staff
- Key stakeholders

Identify:
- Potential risks
- Direct and indirect stakeholders
- Possible audit approaches or procedures

Planning – Risk Assessment

“Risk assessment is a process by which an auditor identifies and evaluates the quantity of the organization’s risks and the quality of its controls over those risks.”

US Department of Treasury

Planning – Risk Assessment

1. Risk identification (what is the risk?)
   A description of the risk
2. Risk rationale (why does the risk exist?)
   What events cause the risk to occur
3. Impact (so what?)
   The extent the risk would affect the Institution
4. Likelihood (how often?)
   Probability of the risk occurring
### Planning – Risk Assessment

#### Auditor’s Evaluation of Risk

<table>
<thead>
<tr>
<th>ITEM #</th>
<th>PROJECT RISK (Inherent Risk)</th>
<th>UN likelihood</th>
<th>IMPACT</th>
<th>INITIAL RISK SCORE</th>
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1. Identify a list of potential risks related to the process, function, department or system. For each risk identified, rate the likelihood that it will happen and the impact if it did happen.

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<tbody>
<tr>
<td>1</td>
<td>Physician fails to document justification for two-midnight inpatient admission</td>
<td>1</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Admission Orders not signed</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>Discharge summary not documented</td>
<td>2</td>
<td>3</td>
<td>6</td>
</tr>
</tbody>
</table>

#### Management’s Evaluation of Risk

<table>
<thead>
<tr>
<th>ITEM #</th>
<th>PROJECT RISK (Inherent Risk)</th>
<th>MANAGEMENT AGREEMENT</th>
<th>MITIGATING FACTORS THAT AFFECT RISK PERCEPTION</th>
<th>ADJUSTED RISK SCORE</th>
</tr>
</thead>
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1. Do managers of this process or area agree with the risk score?
   - Y: Yes
   - N: No

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<tr>
<td>2</td>
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<td>Y</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>3</td>
<td>Discharge summary not documented</td>
<td>N</td>
<td>Discharge summary is included in discharge packet</td>
<td>2</td>
</tr>
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### Planning – Risk Assessment Walkthroughs

Using information from stakeholders, identify key processes and perform walkthroughs:

- Providers, Care Management, and Revenue Cycle
  - Workflows vs. Routines
  - EMR Training vs. EMR Use
  - Coding & Denials
Example Outcome of Walkthrough

Planning - Risk Assessment

- Prioritize the key identified risks.
  - Risk – Expectation of stay exceeding 2 midnights not documented
- Identify the workflows/procedures that should mitigate the risk
  - Procedure - Require documentation of expectation of stay exceeding 2 midnights
- Design the audit tests and tools to verify that these control procedures are working effectively
  - Test – Does the EMR contain documentation of the expectation of stay exceeding 2 midnights

Planning - Analytics

- To determine prevalence of CC44:
  - Compare the number of status changes from Inpatient to Observation to number of Inpatient admissions for <60 Hours
- To determine prevalence of Observation Admissions
  - Trend analysis of Inpatient and Observation discharges
- Determine difference between Inpatient and Outpatient reimbursement
Check - In

Review 2 MN Rule, MOON Form, & Condition Code 44

Review External and Internal Compliance Risks

Planning steps (Research, Brainstorming, Risk Assessment – Walkthroughs & Analytics)

Up Next:
- It’s time to begin the development of your audit tool for the 3 areas to be audited:
  - 2 Midnight Rule
  - Condition Code 44
  - MOON Form
Audit Tool- 2MN Rule

Population – All short-stays (< 48 hours) with inpatient status
Sample – Statistically valid sample

Determining Medical Necessity
Test 1 – Clearly document clinical reasons in EMR
- Medical History
- Comorbidities
- Severity of signs and symptoms
- Current medical needs

Test 2 – Clearly document risk factors
- Risk (probability) of an adverse event occurring

Test 3 – Clearly documented reason for early discharge

Audit Tool- 2MN Rule

Exceptions and Unforeseen Circumstances
Inpatient stays less than 2MN

1. Medicare “Inpatient Only” Procedures
2. Unforeseen Circumstances
   a) Death
   b) Against Medical Advice (AMA)
   c) Transfer to another hospital
   d) Rapid Clinical Improvement
   e) Election of hospice
3. Nationally Rare and Unusual Exceptions

QIO 2MN claim revenue guideline is available at https://www.cms.gov
Audit Tool – MOON Form

Population – Observation cases > 24 Hours
Sample - Statistically valid sample

Test 1 – MOON Form required?
Test 2 – MOON Form provided to patient within the first 36 hours of observation?
Test 3 – MOON form accurate and complete? (dated, signed, time documented)

Audit Tool - Condition Code 44

Population – All accounts billed with Condition Code 44
Sample – Statistically valid sample

Test 1 – Was status changed from Inpatient to Outpatient before patient discharged?
Test 2 – Physician's concurrence with UR?
Test 3 – Patient signs MOON before discharge?
Test 4 – Physician's concurrence documented?

Check - In

Reviewed 2 MN Rule, MOON Form, & Condition Code 44
Reviewed External and Internal Compliance Risks
Planning steps (Research, Brainstorming, Risk Assessment – Walkthroughs, Internal Controls, & Analytics)
Development of audit tools for: 2MN, MOON form & Condition Code 44

Up Next:
• It's time to draft your final report
Reporting

- Audit Findings and Recommendations
  - Summary results of walkthroughs, analytics and testing
  - Recommend process improvements
    - Developed with input from stakeholders
- Management Action Plans
  - Management’s plan to make recommended improvements
  - Responsible Party
  - Target Date

Reporting - Example Heat Map

Reporting - Example Results Grid

<table>
<thead>
<tr>
<th>Date Pattern</th>
<th>Disparities Identified</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1</td>
<td>Physician fails to document justification for two-midnight status prior to admission</td>
<td>2 out of 30</td>
</tr>
<tr>
<td>A2</td>
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<td>A3</td>
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Recommendations and Required Corrective Actions:

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<th>Risk Indicator</th>
<th>Corrective Action Plan</th>
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Reviewed External and Internal Compliance Risks
Planning steps complete (Research, Brainstorming, Risk Assessment – Walkthroughs, Internal Controls, & Analytics)
Development of audit tools for: 2MN, Condition Code 44, & MOON form
Complete draft of your final report

Now it's time for Questions from you!

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Galen.Ward@conehealth.com