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

HCCA Regional Compliance Conference
January 19, 2018

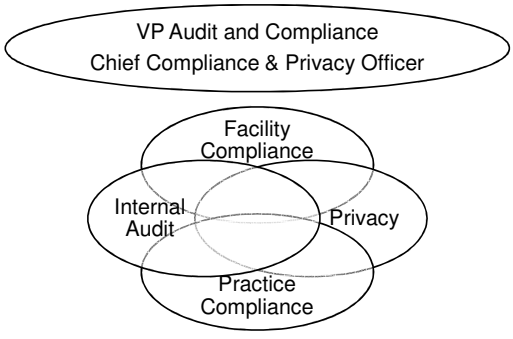
Chet Efird, MSA, CPA – Assistant Director, Internal Audit
Laura Bertinetti, MBA/MHA, RHIA – Compliance & Integrity Program Manager
Keiasha Robinson, MHA, CPC – Senior Facility Compliance Specialist
Galen Ward, MSA, CPA, CHFP – Senior Internal Auditor

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

2

Audit & Compliance Services at Cone Health



3

Why audit?

4

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

5

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.

- Effective October 1, 2013
- Benchmark criteria for reasonableness of inpatient admissions
- Payable under Medicare Part A if the admitting practitioner expected the patient to require a hospital stay that crossed two midnights
- Medical record supports that expectation

6

MOON Form

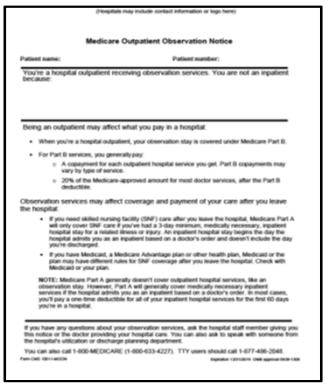
The Notice of Observation Treatment and Implication for Care Eligibility Act (NOTICE Act) was enacted on August 6, 2015 and implemented on March 08, 2017. The NOTICE Act requires "hospitals and Critical Access Hospitals to provide notification to individuals receiving observation services as outpatients 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.

- 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

7

MOON Form

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



(Hospitals may include contact information or logo here)

Medicare Outpatient Observation Notice

Patient name: Patient number:

You're a hospital outpatient receiving observation services. You are not an inpatient because:

Being an outpatient may affect what you pay in a hospital:

- When you're a hospital outpatient, your observation stay is covered under Medicare Part B.
- For Part B services, you generally pay:
  - A copayment for each outpatient hospital service you get. Part B copayments may vary by type of service.
  - 20% of the Medicare-approved amount for most doctor services, after the Part B deductible.

Observation services may affect coverage and payment of your care after you leave the hospital:

- If you need skilled nursing facility (SNF) care after you leave the hospital, Medicare Part A will only cover SNF care if you've had a 3-day minimum, medically necessary, inpatient hospital stay for a related illness or injury. An inpatient hospital stay begins the day the hospital admits you as an inpatient based on a doctor's order and doesn't include the day you're discharged.
- If you have Medicaid, a Medicare Advantage plan or other health plan, Medicaid or the plan may have different rules for SNF coverage after you leave the hospital. Check with Medicaid or your plan.

NOTE: Medicare Part A generally doesn't cover outpatient hospital services, like an observation stay. However, Part A will generally cover medically necessary inpatient services if the hospital admits you as an inpatient based on a doctor's order. In most cases, you'll pay a one-time deductible for all of your inpatient hospital services for the first 60 days you're in a hospital.

If you have any questions about your observation services, ask the hospital staff member giving you this notice or the doctor providing your hospital care. You can also ask to speak with someone from the hospital's utilization or discharge planning department.

You can also call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

Form CMS-10111-NOTICE Expiration 12/31/2019. OMB approval #0938-1065

8

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)

9

2MN Rule, CC44, MOON Compliance Risks

External

- Noncompliance with Code of Federal Regulations
- Noncompliance with CMS's Guidance
- Possible recoupment
- Potential fines
- Gaming
- Audit by the Medicare Beneficiary and Family Centered Care (BFCC) Quality Improvement Organization (QIO)

Internal

- EMR technical issues
- Lack of or inadequate Policy and Procedure
- Noncompliance with existing Policy and Procedures
- Gaming
- Provider judgement
- Deficient provider documentation
- Possible recoupment
- Failure to maximize revenue

10

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

11

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

12

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**

13

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

14

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

15

Planning – Risk Assessment

Inpatient/Outpatient				
Risk Assessment				
Auditor's Evaluation of Risk				
ITEM #	PROJECT RISK (Inherent Risk)	LIKELIHOOD	IMPACT	INITIAL RISK SCORE
	Brainstorm a list of potential risks related to the process, function, department or system. For each risk identified, rate the likelihood that it could happen and the impact if it did happen.	0=UNLIKELY 1=POSSIBLE 2=PROBABLE 3=HIGHLY LIKELY	0=N/A 1=LOW 2=MEDIUM 3=HIGH	Likelihood + Impact
1	Physician fails to document justification for two-midnight inpatient admission	3	3	6
2	Admission Orders not signed	1	3	4
3	Discharge summary not documented	2	2	4

16

Planning – Risk Assessment

	Management's Evaluation of Risk			
ITEM #	PROJECT RISK (Inherent Risk)	MANAGEMENT AGREEMENT	MITIGATING FACTORS THAT AFFECT RISK PERCEPTION	ADJUSTED RISK SCORE
		Do managers of this process or area agree with the risk score?	Describe and rate the likelihood that the risk could happen and the impact if it did happen, considering the mitigating factors.	Initial risk score will apply if management agrees. Adjusted score may otherwise apply.
		(Y/N)		
1	Physician fails to document justification for two-midnight inpatient admission	Y		6
2	Admission Orders not signed	Y		4
3	Discharge summary not documented	N	Discharge summary is included in discharge packet	2

17

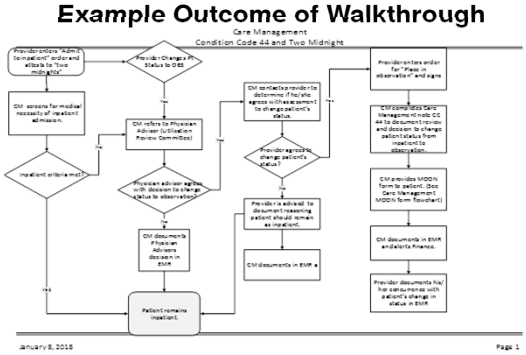
Planning – Risk Assessment Walkthroughs

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

18

Example Outcome of Walkthrough



19

Planning - Risk Assessment Internal Controls

- 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

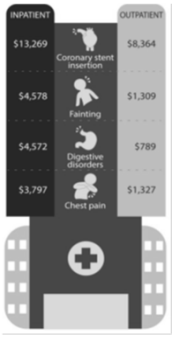
20

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

21

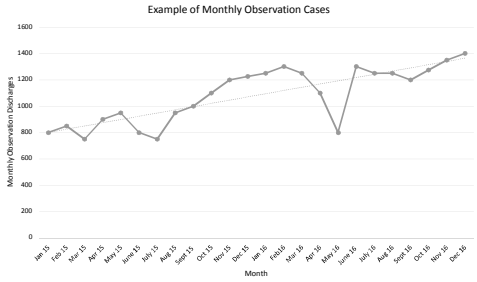
INPATIENT VERSUS OUTPATIENT REIMBURSEMENT



SOURCE: OIG ANALYSIS OF CMS DATA, 2016

22

PLANNING - ANALYTICS



23

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

24

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

25

Audit Tool- 2MN Rule

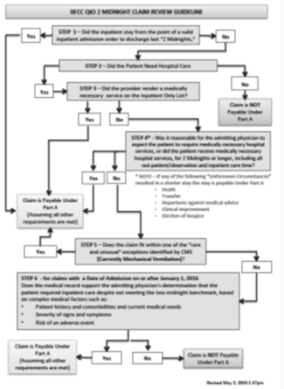
Exceptions and Unforeseen Circumstances Inpatient stays less than 2MN

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

26

Audit Tool- 2MN Rule

QIO 2MN claim revenue guideline is available at https://www.cms.gov



27

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)

28

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?

29

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

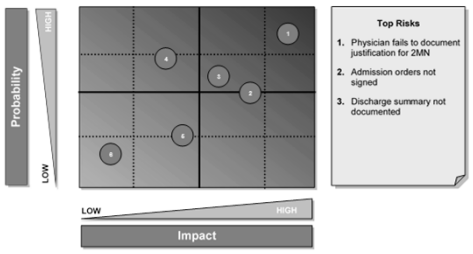
30

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

31

Reporting - Example Heat Map



32

Reporting - Example Results Grid

Detail Findings:

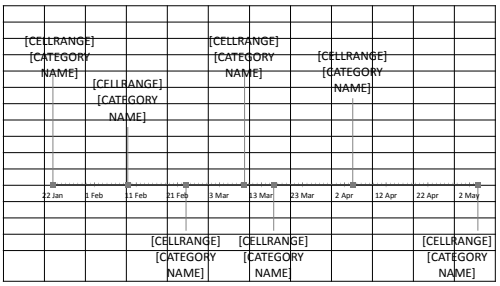
Risk Indicator	Discrepancies Identified	Comments
A1. Physician fails to document justification for two-midnight inpatient admission	2 (out of 30)	Two (2) accounts did not have clear documentation of rationale of expectation of two-midnight stay.
A2. Admission Orders not signed	2 (out of 30)	Two (2) accounts did not have a signed admission order in the record.
A3. Discharge summary not documented	2 (out of 30)	Two (2) accounts are missing discharge summary.

Recommendations and Required Corrective Actions:

Risk Indicator	Corrective Action Plan
A1. Physician fails to document justification for two-midnight inpatient admission	
A2. Admission Orders not signed	
A3. Discharge summary not documented	

33

Project Timeline



34

Check - In

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

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

35

Now it's time for Questions from you!

Chet.Efird@conehealth.com

Laura.Bertinetti@conehealth.com

Keiasha.Robinson@conehealth.com

Galen.Ward@conehealth.com

36