PUBLICATION

CMS Seeks Suggestions for Rules Governing Inpatient vs. Outpatient Admission Decisions [Ober|Kaler]

July 26, 2012

In its recently issued proposed hospital outpatient prospective payment system rule for CY 2013, CMS acknowledges concerns raised by providers related to the inpatient versus outpatient admission decision. CMS solicits comments on potential policy changes that could be made to improve clarity and consensus among providers, Medicare and other stakeholders regarding the relationship between admission decisions and appropriate Medicare payment. Comments are due by September 4, 2012.

Both providers and advocates for beneficiaries have raised concerns about the issue. Beneficiaries are concerned about the increased cost associated with an outpatient stay due to higher copayments and deductibles, as well as the inability to have a later skilled nursing stay covered by Medicare. Patient advocate groups have filed a number of lawsuits related to this issue, and it has begun to gain traction in the popular press. *See* Gengler, A., "This Could Hurt – a Lot," *Money Magazine*, August 2012. Providers are concerned because the rules for when to admit as an inpatient versus provide observation care as an outpatient, are complicated and require complex medical judgment that can be made by a physician after consideration of a number of factors. Although this standard results in significant gray area, Medicare contractors, such as Medicare Administrative Contractors (MACs), Recover Audit Contractors (RACs) and Comprehensive Error Rate Testing (CERT) Contractors, are reviewing these decisions and disallowing claims that they find were based on an improper decisions.

When a hospital admits a patient as an inpatient and Medicare later decides the patient should have been treated as an outpatient, current Medicare policy dictates that the hospital can only collect for a handful of Part B services and any outpatient services provided in the 3-day payment window prior to the admission, subject to timely filing restrictions. This payment is far less than the payment the hospital would receive for an inpatient admission and less than it would have received if the hospital had treated the patient as an outpatient from the start. Hospitals have raised the concern that this policy results in inadequate payment for the resources the hospital has expended on the patient. In order to avoid this result, some hospitals are treating more patients as outpatients with longer stays. CMS has raised concerns about this as well, in that it results in more beneficiaries incurring the higher costs discussed above, associated with an outpatient stay.

One of the things that makes this policy even more frustrating is that it is handled so differently by Medicare than by other payors. Most other payors either require preauthorization before an inpatient stay so the hospital knows the stay will be covered, or allow payment for the full stay as a covered outpatient encounter if the payor determines that the patient should have been classified as an outpatient rather than an inpatient.

CMS's proposed rule discusses the current Medicare Part A to Part B Rebilling Demonstration, which allows participating hospital to receive 90 percent of the Part B payment for patients the Medicare contractor determines were treated as inpatients but should have been treated as outpatients. This demonstration is suppose to last for three years, from CY 2012 through 2014. CMS advises that it will report on the results of the project in the future. More information on the demonstration project can be found at www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/CERT/Part_A_to_Part_B_Rebilling_Demonstration.

The primary focus of the discussion in preamble of the rules, however, is to solicit comments from stakeholders regarding how CMS could improve its current instructions on the determination of when a patient is properly classified as an inpatient or outpatient, and how CMS could clarify the payment ramifications.

Ober|Kaler's Comments

On the one hand, it is good to see CMS asking for comments on this issue. On the other hand, the stakeholders have been providing suggestions and input for years without any movement by CMS to make the system easier to navigate. The system is obviously broken. The way the rules stand now, the decision whether to treat a patient as an inpatient or an outpatient requires complex medical judgment and there are no bright line rules. Hospitals cannot err on the side of caution because there is no real side of caution – CMS is concerned with hospitals that its contractors determine have too many inpatient admissions, as well as with hospitals determined to have too many long stay outpatient encounters.

Hospitals should seriously consider taking the opportunity to present their concerns and ideas on how to change the system to be clearer and fairer to all concerned. Comments are due by September 4, 2012.