

# PUBLICATION

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## CMS Posts Guidance on Two-Midnight Rule and Related Audits [Ober|Kaler]

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On February 24, 2014, CMS posted a list of updates to its guidance on the new Two-Midnight Rule and the Probe and Educate Audits. Several of the more major updates are discussed below.

### Rereviews by MACs

CMS has instructed the MACs to rereview all claim denials made during the Probe and Educate process, to ensure consistency with CMS's recent clarifications. The MAC may reverse and pay any of these claims outside of the claims appeal process. In addition, CMS will waive the 120 day deadline for filing requests for redetermination, for any requests received before September 30, 2014, related to denials under the Probe and Educate process that occurred on or before January 30, 2014. The rereview includes claim denials that have been appealed. In its February 27 MLN Connect National Provider Call, CMS representatives advised that the appeal process will not be interrupted or stayed by the rereview process, so it will not delay the appeal process.

### Probe and Educate Audit Data

CMS posted a report on the MACs' initial findings as a result of the Probe and Educate Audits. It listed the following common reasons for denials of inpatient claims:

- missing or flawed orders for inpatient admission, which lacked either an inpatient order or an expectation of a two-midnight stay;
- short stay procedures without an expectation of two midnights but for which the physician wrote an inpatient admission order;
- short stays for medical conditions for which a one-day inpatient stay was claimed but denied because the medical record failed to support an expectation of a two-midnight stay; and
- physician attestations without supporting medical record documentation, e.g., when a physician order includes a checked box with pre-printed text stating the beneficiary is expected to require two or more midnights of hospital care, but the physician notes reflect an expectation of only a one night stay.

### Transfers

CMS updated both its instructions for reviewing hospital claims and its FAQs to include guidance addressing transfer situations. The initial or transferring hospital can consider only the expected length of stay at its hospital in making the determination of whether to admit a patient as an inpatient, i.e., the hospital must expect the patient will stay at its own hospital for at least two midnights. The receiving hospital, however, should include the total time at both the transferring and receiving hospitals in making the inpatient determination. CMS warned that excessive wait time and time spent in the hospital for non-medically necessary services must be excluded from the calculation. During the February 27 MLN call, CMS advised that the receiving hospital will be responsible for obtaining documentation from the transferring hospital to support any inpatient admission at the receiving hospital. The revised documents also instruct that a patient who receives care at an

off-campus location of a hospital that is provider-based or a practice location of that hospital, and who is later moved to the main location of the hospital, is not considered a transfer.