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On November 25, 2025, CMS released updates related to the Two-Midnight rule in the calendar year (CY) 2026 Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Systems (OPPS/ASC) final rule.

Hospital Inpatient vs. Outpatient

Because of the way the Medicare statute is structured, the Medicare payment rates for inpatient and outpatient hospital services differ.

CMS pays acute-care hospitals (with a few exceptions specified in the law) for inpatient stays under the Hospital Inpatient Prospective Payment System (IPPS) in the Medicare Part A program. CMS sets payment rates prospectively for inpatient stays based on the patient's diagnoses, procedures, and severity of illness.

In contrast, the OPPS is paid under the Medicare Part B program and is a hybrid of a prospective payment system and a fee schedule, with some payments representing costs packaged into a primary service (these are prospective) and other payments representing the cost of a particular item, service, or procedure (these are retrospective).

When a Medicare beneficiary arrives at a hospital in need of medical or surgical care, the physician or other qualified practitioner must decide whether to admit the beneficiary as an inpatient or treat him or her as an outpatient. Additionally, if clinical circumstances warrant, a physician may admit as inpatient a beneficiary initially hospitalized as an outpatient during the hospitalization. These decisions have significant implications for hospital payment and beneficiary cost sharing. Not all care provided in a hospital setting is appropriate for inpatient, Part A payment.

The Two-Midnight Rule

Background

Prior to CMS' adoption of the Two Midnight Rule, through the Recovery Audit program, CMS identified high rates of error for hospital services rendered in a medically-unnecessary setting (*i.e.*, inpatient rather than outpatient).

CMS also observed a higher frequency of beneficiaries being treated as hospital outpatients and receiving extended "observation" services. Hospitals and other stakeholders expressed concern about this trend for two main reasons: 1) days spent as a hospital outpatient do not count towards the three-day inpatient hospital stay that is required before a beneficiary is eligible for Medicare coverage of skilled nursing facility services and 2) increasing billing disputes between hospitals and Recovery Audit Contractors focused on outpatient vs inpatient hospitalization determinations.

To address these issues, hospitals and other stakeholders requested additional clarity regarding when an inpatient admission is payable under Medicare Part A. In response, in 2012, CMS solicited feedback on possible criteria that could be used to determine when inpatient admission is reasonable and necessary for purposes of payment under Medicare Part A.

The Two-Midnight Rule

To provide greater clarity to hospital and physician stakeholders, and to address the higher frequency of beneficiaries being treated as hospital outpatients for extended periods of time, CMS adopted the Two-Midnight rule for admissions beginning on or after October 1, 2013. This rule established Medicare payment policy regarding the benchmark criteria to use when determining whether inpatient admission is reasonable and necessary for purposes of payment under Medicare Part A.

In general, the original Two-Midnight rule stated that:

- Inpatient admissions would generally be payable under Part A if the admitting practitioner expected the patient to require a medically necessary hospital stay that crossed two midnights and the medical record supported that reasonable expectation.
- Medicare Part A payment was generally not appropriate for hospital stays expected to last less than two midnights. Cases involving a procedure identified on the inpatient-only list or that were identified as "rare and unusual exception" to the Two-Midnight benchmark by CMS were exceptions to this general rule and were deemed to be appropriate for Medicare Part A payment. CMS subsequently identified newly initiated mechanical ventilation to fall under the "rare and unusual exception" and appropriate for Medicare Part A payment regardless of expected length of stay.

The Two-Midnight rule also specified that all treatment decisions for beneficiaries were based on the medical judgment of physicians and other qualified practitioners. The Two-Midnight rule did not prevent the physician from providing any service at any hospital, regardless of the expected duration of the service.

Following the adoption of the Two-Midnight rule, CMS received extensive feedback from the stakeholder community, including concerns that the new policy was impacting physician and hospital practices.

In response to this feedback, CMS modified the Two-Midnight rule in the CY 2016 OPPS/ASC final rule.

CY 2016 OPPS/ASC Final Rule

In the CY 2016 OPPS/ASC final rule, CMS maintained the benchmark established by the original Two-Midnight rule, but permitted greater flexibility for determining when an admission that does not meet the benchmark should nonetheless be payable under Part A on a case-by-case basis.

Changes in Review: Short Inpatient Hospital Stays

For stays expected to last less than two midnights – CMS adopted the following policies:

- For stays for which the physician expects the patient to need less than two midnights of hospital care (and the procedure is not on the inpatient-only list or otherwise listed as a national exception), an inpatient admission may be payable under Medicare Part A on a case-by-case basis based on the judgment of the admitting physician. The documentation in the medical record must support that an inpatient admission is necessary, and is subject to medical review.
- CMS reiterated the expectation that it would be unlikely for a beneficiary to require inpatient hospital admission for a minor surgical procedure or other treatment in the hospital that is expected to keep him or her in the hospital for a period of time that is only for a few hours and does not span at least overnight. CMS will monitor the number of these types of admissions and plans to prioritize these types of cases for medical review.

No change for stays over the Two-Midnight benchmark:

- For medically necessary hospital stays that are expected to be two midnights or longer, our policy remained unchanged; that is, if the admitting physician expects the patient to require hospital care that spans at least two midnights, the services are generally appropriate for Medicare Part A payment. This policy applies to inpatient hospital admissions where the patient is reasonably expected to stay at least two midnights, and where the medical record supports that expectation that the patient would stay at least two midnights. This includes stays in which the physician's expectation is supported, but the length of the actual stay was less than two midnights due to unforeseen circumstances such as unexpected patient death, transfer, rapid clinical improvement or departure against medical advice.

For more information on the CY 2016 OPPS/ASC final rule, see this fact sheet. The CY 2016 OPPS/ASC final rule can be found here: https://www.federalregister.gov/documents/2015/11/13/2015-27943/medicare-program-hospital-outpatient-prospective-payment-and-ambulatory-surgical-center-payment.

CY 2026 OPPS/ASC Final Rule

Change in Entities Responsible for Conducting Short Stay Inpatient Hospital Medical Reviews and Patient Status Reviews

As noted in the CY 2026 OPPS/ASC final rule (90 FR 53448, footnote 210), effective September 1, 2025, the performance of short stay inpatient admission hospital medical reviews and provider education (i.e. patient status reviews) for acute care inpatient hospitals, long-term care hospitals, and inpatient psychiatric facilities transitioned from the Beneficiary and Family Centered Care (BFCC) Quality Improvement Organizations' (QIOs) (BFCC-QIO) to Medicare Administrative Contractors (MACs). MACs will perform reviews on a sample of Medicare Part A claims as part of the Targeted Probe and Educate (TPE) program. TPE program details are located on: https://www.cms.gov/data-research/monitoring-programs/medicare-fee-service-compliance-programs/medical-review-and-education/targeted-probe-and-educate-tpe.

Additional details regarding hospital patient status reviews are available at the CMS Medical Review and Education inpatient hospital page: https://www.cms.gov/data-research/monitoring-programs/medicare-fee-service-compliance-programs/medical-review-and-education/hospital-patient-status-reviews.

Frequently asked questions are also available at: https://www.cms.gov/data-research/monitoring-programs/medicare-fee-service-compliance-programs/medical-review-education/inpatient-hospital-reviews-faqs.

MACs will review according to instructions published in the Medicare Program Integrity Manual (PIM) 100-8 Chapter 6:

https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/pim83c06.pdf. The review process is outlined in PIM Exhibit 48 entitled The Guideline for Hospital Patient Status Reviews: https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/pim83exhibitspdf.pdf.

Continued Exemption from Certain Medical Review Activities Related to the Two-Midnight Rule for Procedures Removed from the Inpatient Only (IPO) List

In the CY 2021 OPPS/ASC final rule, in conjunction with the planned elimination of the IPO list, CMS established a policy in which procedures removed from the IPO list beginning January 1, 2021 would be exempted from certain medical review activities related to the Two-Midnight rule for an indefinite time period, until the Secretary determined that the service or procedure was more commonly performed in the outpatient setting. Subsequently, in the CY 2022 OPPS/ASC final rule, CMS decided to halt the elimination of the IPO list, and consequently announced its intent to revert back to a two year exemption for services removed from the IPO list. However, due to a drafting oversight, the regulation text regarding the indefinite exemption was inadvertently left unchanged, and thus the indefinite exemption continued in effect. In the CY 2026 OPPS/ASC final rule, CMS finalized its proposal to again begin a phased elimination of the IPO list, and finalized the related proposal to continue the existing exemption for CY 2026 and subsequent years until the Secretary determines that the service or procedure is more commonly performed for the Medicare population in the outpatient setting than the inpatient setting.

The CY 2026 OPPS/ASC final rule can be found here: https://www.federalregister.gov/documents/2025/11/25/2025-20907/medicare-program-hospital-outpatient-prospective-payment-and-ambulatory-surgical-center-payment.

For information about the applicability of the Two-Midnight rule in Medicare Advantage, see the 2024 final rule titled: “Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly.”