OBSERVATION SERVICES:
2020 CMS UPDATES

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Disclosure of Commercial Relationships:

- Nature of Relationship
  - Name of Commercial Entity
  - Advisory Board
    - None
  - Consultant
    - None
  - Employee
    - None
  - Board Member
    - None
  - Shareholder
    - None
  - Speaker's Bureau
    - None
  - Patents
    - None
  - Other Relationships
    - CMS Technical Expert Panel: AMI, HF, pneumonia
      - Past CMS APC Advisory Panelist
      - Chair – Visits and Observation Subcommittee
      - Accreditation Management Board, American College of Cardiology

Objectives:

A. Understand the structure of the Center for Medicare and Medicaid Services (CMS) and how to access information

B. Know CMS policies that impact observation care – definition, C-APC 8011, 2-midnight rule, out of pocket costs, SNF benefit, and the MOON

B. Learn potential future CMS issues with observation services – physician involvement, growth, unpackaging

Background: U.S. Health System

The Nation’s Health Dollar, Calendar Year 2016: Where It Went

The Nation's Health Dollar, Calendar Year 2016: Where It Came From

Medicare Benefit Payments by Type of Service, 2016

Total Medicare Benefit Payments, 2016: $675 billion
Growth in Medicare HOPD Spending

Specific Services with Highest Share of HOPD Volume (Medicare FFS)

Observation word salad:

1. DHHS
2. CMS
3. DRG
4. F.I.
5. MAC
6. OIG
7. RAC
8. IOM
9. HOP
10. OPPS
11. APC
12. T-status indicator
13. MOON
14. SNF
15. SAM
16. HRRP

A. The Anatomy and Physiology of Medicare (or CMS)...

- U.S. Government:
  - Judicial Branch
  - Legislative Branch:
    - Senate
    - House of Representatives
  - Executive Branch
    - Cabinets
    - Secretary of State
    - Secretary of Health and Human Services
    - Secretary of Defense
    - etc...

Dept of Health and Human Services (DHHS) administers:

- Seema Verma Administrator of CMS

Center for Medicare and Medicaid Services (CMS)

- Employs about 6,000 employees:
  - 4,000 are located at its headquarters in Baltimore
  - The remaining employees are located in:
    - Hubert H. Humphrey Building in Washington, D.C.
    - 10 regional offices
    - Various field offices located throughout the United States.
  - The head of the CMS is appointed by the president and confirmed by the Senate.
Corrections for Medicare:

Part A: Hospital Insurance - 1966

Part B: Medical Insurance

Part C: Medicare Advantage plans ("Medicare HMO")

Part D: Prescription drug plans

Medicare Parts A, B, C, & D

Medicare Parts A, B, C, & D

How to find CMS policies:

Search: “CMS Internet Only Manuals”:

Home > Regulations and Guidance > Manuals > Internet-Only Manuals (IOMs) Items >

- 100-02 Medicare Benefits Policy Manual
  - Chapter 6: Hospital Services Covered Under Part B

- 100-04 Medicare Claims Processing Manual
  - Chapter 4 – Part B Hospital

- Chapter 12 – Physician/Nonphysician Practitioners

Medicare Outpatient (OPPS) Rulemaking process:

- **July**: Proposed Rule (Federal Register)
  - 2020 – Observation - NO CHANGE!!!

- **July – Sept**: Open comment period
  - Public / stakeholder organizations
  - HOP (Hospital Outpatient Panel)
  - Med Pac

- **Sept – Nov**: Closed comment period
  - Nov: Final Rule (Federal Register)
  - Program Memorandum
  - Hospital Manual
  - CMS website

- **Jan 1**: Implementation date

Part A: Hospital Insurance

- Part A covers inpatient hospital stays, including semiprivate room, food, and tests.
  - Definition of an inpatient — to be discussed

- Part A — For each benefit period, a beneficiary will pay:
  - A Part A deductible of $1,340 (in 2018) for a hospital stay of 1–60 days.
  - A $167.50 per day co-pay (in 2018) for days 21–90 of each hospital stay.
  - A $0 co-pay for the first 20 days of each benefit period.
  - A $712.00 per day for days 21–90 of each benefit period.
  - All costs after day 90 of the benefit period.
  - Covers hospice benefits

Part A: Rehab or Skilled Nursing Facility (SNF) payment

1. The Four “IF”s:
   - A preceding hospital stay must be at least three days as an inpatient, three midnights, not counting the discharge date.
   - The nursing home stay must be for something diagnosed during the hospital stay or for the main cause of hospital stay.
   - If the patient is not receiving rehabilitation but has some other aliment that requires skilled nursing supervision then the nursing home stay would be covered.
   - The care being rendered by the nursing home must be skilled.
     - Medicare part A does not pay stays which only provide custodial, non-skilled, or long-term care activities, including activities of daily living (ADL) such as personal hygiene, cooking, cleaning, etc.

Medicare Part B:

1. Outpatient hospital procedures and visits
2. Physician and nursing services
3. X-rays
4. Laboratory and diagnostic tests
5. Ailments that require skilled nursing
6. Blood transfusions
7. Renal dialysis
8. Limited ambulance transportation
9. Renal dialysis
10. Chemotherapy
11. Hormonal treatments such as lupron
12. Other outpatient medical treatments administered in a doctor’s office.
13. Medication administered by the physician during an office visit
14. Durable Medical Equipment

Observation Services – CMS history

1. 1965 – earliest description of EDOUs
2. 1980 – DRGs (IPPS) begin
3. 1983 – CMS observation services begin - poorly defined
4. 2000 – APCs (OPPS) begins. Observation dropped (packaged)
   - Shift to inpatient
   - 2002 – Observation APC created (3 dx, with stipulations)
   - 2005 - Observation APC modified - stipulations lifted
   - 2008 – Observation APC modified – all conditions covered
   - 2008 – RAC roll out, targeting short inpatient stays
   - Shift to observation
   - 2013 – “Two midnight rule” launched – to reduce RAC audits
   - 2016 – NOTICE ACT / MOON
   - 2016 – Comprehensive APC (8011) – Observation

INPATIENT DEFINITION

Effective 2016

- A 2 midnight benchmark: FOR DOCTORS
  - An inpatient is a patient that is expected to stay in the hospital at least two midnights:
    - 24 hours and 1 minute, or 47 hours and 59 minutes
    - “Click” starts at triage
    - Outpatient time (ED or observation) counts
    - Inpatient stays < 2-MN not paid as an inpatient
    - except death, transfer, AMA, etc
  - A 2 midnight presumption: FOR REVIEWERS
    - If a patient met benchmark criteria, the admission will not be scrutinized by reviewers (RAC, MAC, etc)

Medicare Part B - coverage

- 2018 “covered” services –
  - Begins after a 2018 yearly deductible of $183
  - Then Medicare pays 80% of approved services
    - Patients pays a 20% co-insurance
  - Exceptions:
    - Most lab services – 100%
    - Outpatient mental health services – 55% (planned trending toward 20% over several years)
  - Medigap (or Medicare Supplemental Insurance)
    - Covers Medicare deductibles and non-covered costs
    - ~25% of Medicare beneficiary have some form of Medigap


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DEFINITION: OBSERVATION - 2018

Observation care is a well-defined set of specific, clinically appropriate services, which include ongoing short term treatment, assessment, and reassessment, that are furnished while a decision is being made regarding whether patients will require further treatment as hospital inpatients or if they are able to be discharged from the hospital.

...Observation services are covered only when provided by order of a physician or another individual authorized by State licensure law and hospital bylaws to admit patients to the hospital or to order outpatient tests.

...In only rare and exceptional cases do reasonable and necessary outpatient observation services span more than 48 hours. In the majority of cases, the decision can be made in less than 48 hours, usually in less than 24 hours.

Current CMS Payment Policy for Observation Services - APC 8011 (effective 2016): "Comprehensive Observation Services" APC

- Current Hospital Payment Requirements:
  1. Physician order and documentation supporting the need for observation
  2. Preceding (packaged) HOSPITAL visit: any of the following
     - Clinic visit (HCPCS code G0463)
     - Type A or B ED visit - level 1 to 5 (HCPCS code 99281-99285, HCPCS G0380-4)
     - Critical care (CPT code 99291)
     - Direct referral for observation (HCPCS code G0379, APC 5013)
  3. Minimum of 8 hours of observation:
     - "observation services of substantial duration"
     - HCPCS code G0378 X 8 or more
  4. No associated "T-status" procedure on the same or preceding day
     - Surgery or procedures
   - NEW Status Indicator "J2" for C-APC
   - 2020 APC 8011 Payment Amount = $2,226
   - Includes all other services (stress test, MRI, etc)
   - It does NOT include two things:
     - SNF inpatient time
     - Self administered meds

VII. Proposed OPPS Payment for Hospital Outpatient Visits and Critical Care Services

"For CY 2020, we are proposing to continue with our current clinic and emergency department (ED) hospital outpatient visits payment policies..."

Observation and CMS policy Issues

1. NOTICE ACT and the MOON
2. Hospital readmissions and observation
3. Patient out of pocket costs
4. Self Administered Meds
5. Skilled Nursing Facility benefits

1. The "NOTICE Act" and the "Medicare Outpatient Observation Notice" (or "MOON")
   - UPDATE — Open comment period until September 27, 2019:
   - Not just a policy, a LAW (status) - Effective August 6, 2016
   - If a patient will be receiving observation services for more than 24 hours, the hospitals must notify patients (written and oral) in plain language:
     1. That they are "outpatient" status and is not an "inpatient" of the hospital
     2. The reason why the patient is outpatient status
     3. The implications of remaining in outpatient status — specifically, the related financial consequences including:
        1. Deductibles
        2. Coinsurance
        3. The lack of coverage for certain items or services not covered by Medicare
        4. The time spent as an outpatient will not count towards the 3-day acute care qualifying stay requirement for coverage of a skilled nursing facility
     4. The notification must be signed by both the patient (or designee) and hospital staff
   - If patients refuse to sign, the refusal must be documented

2. Why are readmissions falling?

Fig. 1: National Medicare Readmission Rates Started to Fall in 2012

- Performance (measurement) Time Period
- Heart Failure
- Pneumonia
- Elective Hip and Knee Replacement
- Diabetic Foot Ulcer
2. Are observation services “hiding” inpatient re-admissions??

Outcomes after observation stays among older adult Medicare beneficiaries in the USA: retrospective cohort study

<table>
<thead>
<tr>
<th>ED disposition</th>
<th>Return: ED</th>
<th>Return: Obs</th>
<th>Return: IP</th>
<th>Return: All</th>
</tr>
</thead>
<tbody>
<tr>
<td>ED=Home</td>
<td>9.8%</td>
<td>1.4%</td>
<td>10.6%</td>
<td>19.9%</td>
</tr>
<tr>
<td>ED=Obs</td>
<td>8.4%</td>
<td>2.9%</td>
<td>11.2%</td>
<td>20.3%</td>
</tr>
<tr>
<td>ED=IP</td>
<td>7.3%</td>
<td>1.2%</td>
<td>15.3%</td>
<td>21.8%</td>
</tr>
</tbody>
</table>

Data represents type 1 through type 4 settings. All Medicare patients 2006-2011. Recidivism similar to ED patients. 1/5 Medicare ED patients will return in 30 days.

3. Do observation stays cost more?

Medicare – NO!

Patients – NO

4. Self Administered Medications (SAMs)

Medicare out of pocket costs: simple math …

- Observation:
  - APC = $444
  - $2,222 x 0.2
  - Self Adm Meds ~ $207
  - If both = $651
    - $444 + $207

- Inpatient:
  - $1,364 deductible

5. Risk of losing “SNF”: OIG

- 2012 OIG analysis of CMS data:
  - 3 days, but less than 3 IP days = 617,702
  - Received SNF services = 25,245 (4%)
    - This represents 0.6% of Medicare Observation patients

- 2013 vs 2014 OIG analysis of CMS data:
  - 3 days, but less than 3 IP days = 633,148 (6% increase over 2013)
    - “Never an inpatient” = 32% of total
    - This group decreased 15.3% over 2013
    - “Started as obs” then an inpatient = 68% of total
    - This group increased 20% over 2013
    - FAILURE TO MAKE A TIMELY DISPOSITION!!! – The case for a Type 1 Unit

Summary

- The people making major decisions (or mistakes) are well intended people like you and I . . . Who don’t know what they don’t know.
  - They NEED YOU to educate them
- Medicare likes “good” observation services and does not like prolonged observation services
- Type 1 observation units are the essential link to good observation care