Advising the Congress on Medicare issues

Hospital short stay policy issues

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April 2, 2015

MEDPAC

Recap from previous sessions

- Admissions decision depends on clinical judgement
- One-day inpatient stays are profitable and paid more than similar outpatient stays
- Recovery Audit Contractors (RACs) have focused their audits on appropriateness of one-day inpatient stays
- Hospitals' increased use of outpatient observation
- 'Two-midnight rule' has been controversial
- Beneficiaries may be unaware of their observation status
- Beneficiaries may face higher liability due to observation's effect on skilled nursing facility (SNF) coverage and self-administered drugs

Outline for this presentation

1. Changes to the RAC program
    A. Reduce administrative burden
    B. Increase accountability
    C. Align look-back period with rebilling window
    D. Withdraw CMS' two-midnight policy
2. Evaluate hospital short stay payment penalty concept
3. Modify SNF three-day rule
4. Require beneficiary notification of observation status
5. Expand coverage for self-administered drugs

Concerns about the Medicare RAC program

- Administrative burden increased for most hospitals, despite only a subset of hospitals accounting for many of the short inpatient stays
- Contingency fee structure rewards the denial of claims. With the exception of losing payment when claim denials are overturned, there are few external controls on RACs' audit accuracy
- Three-year RAC look-back period for reviewing claims is misaligned with the one-year Medicare claim rebilling policy, limiting the opportunity to rebill denied claims

Two-midnight rule: benefits and concerns

- Admission criteria: deference to clinical judgement
- Description:
  - Instructs auditors not to review stays crossing two-midnights for inpatient appropriateness, unless evidence of gaming
  - Stays of less than two-midnights presumed appropriate for outpatient and subject to audit, with certain exceptions
- RAC enforcement of two-midnight rule on hold
- Benefits of two-midnight rule:
  - Reduces some RAC-related hospital administrative burden
  - Reduces volume of long observation stays (48+ hours)
- Concerns generated by two-midnight rule:
  - Exempts most two-midnight stays from RAC oversight
  - Incentive to increase length of stay to reach two-midnights

Three-day hospital stay requirement for SNF coverage

- A small group of beneficiaries incur high out-of-pocket costs because their three-day hospital stay did not include three full inpatient days
- Time spent in observation status does not count toward the three-day requirement
- Coverage requirement related to defining the SNF benefit as strictly a post-acute care benefit, as opposed to a long-term care benefit
- Any change to the requirements for SNF coverage would expand the Medicare benefit

Beneficiary notification of outpatient observation status

- Medicare currently does not require hospitals to notify beneficiaries of their outpatient observation status
- Medicare beneficiaries and beneficiary advocates often cite this lack of notification as a source of confusion for beneficiary SNF eligibility and cost sharing liability
- Several states have laws or are considering laws that require hospitals to inform patients about their status in observation

Coverage of self-administered drugs (SADs)

- Beneficiaries who receive outpatient observation services for an extended period may require some of their oral medications that they would normally take at home
- Oral drugs and certain other drugs that are usually self-administered are not covered by Medicare for hospital outpatients, including those in observation
- Some hospitals reportedly do not charge beneficiaries for SADs while others contend that they must charge beneficiaries for SADs
- For hospitals that do bill beneficiaries for SADs, they bill at full charges, which is substantially higher than the cost of providing the drug