

LETTERS TO THE EDITOR

In Reference to "Changes to Inpatient Versus Outpatient Hospitalization: Medicare's 2-Midnight Rule"

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I thank Locke et al. for their article published in the *Journal of Hospital Medicine*.¹ It summarized well the challenges created by the Recovery Audit Contractor (RAC) program. It is encouraging that the Centers for Medicare & Medicaid Services (CMS) have proposed a different payment method to address the contingency-fee payment controversy. The new method would require the RACs to be paid after a provider's challenge has passed a second level of a 5-level appeals process.² This, however, has been protested by 1 of the RACs, and a federal appeals court has agreed with the protest.³ Furthermore, the Office of Medicare Hearings and Appeals (OMHA) is receiving more requests for hearings than the administrative law judges can adjudicate in a timely manner. OMHA is currently projecting a 20- to 24-week delay in entering new requests into their case processing system. The average processing time for appeals decided in fiscal year 2015 was 547.1 days.⁴ Financial impacts of the "status" issue have thus far only affected hospitals and patients, whereas physician reimbursement has been sheltered. This may change if the RACs request to utilize the CMS manual changes announced in Transmittal 541,⁵ which allows certain auditors to

deny or recoup payment for procedures performed as inpatients that were not medically necessary. Hospitals have increased the cohorts of observation patients on a single unit or implemented different discharge planning processes for inpatients versus observation. However, patient quality outcomes are not available yet on these approaches.

References

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