

MDS Alert

MEDICARE: Good News on the RAC Front: SNFs May Not Have to Worry About Hospital Denials as Much as They Think

SNFs' payment fate may hang on this key manual language.

As the Recovery Audit Contractors (RACs) and other auditors focus their sights on inpatient hospitalization, SNFs are getting nervous about whether denials could wipe out the three-day qualifying hospital stay after the SNF has provided Part A skilled services.

"There's been some concern about that [among SNF providers] in terms of their being at the mercy of what the RAC does in denying hospital stays," says **Betsy Anderson**, a VP with FR&R Healthcare Consulting Inc. in Deerfield, Ill.

According to the Medicare Benefit Policy Manual (chapter 8, section 20.1), for the SNF services to be covered, the qualifying hospital stay must be medically necessary, but the medical necessity is "generally presumed to exist," noted a CMS representative who tackled the issue in a recent SNF/LTC Open Door Forum.

The manual says that when the intermediary discovers facts during its normal claims review process indicating the hospitalization may not have been medically necessary, the intermediary "will fully develop the case, checking with the attending physician and the hospital, as appropriate."

The "key passage" in terms of meeting the SNF benefit requirement for a qualifying hospital stay, said the CMS representative, is where the manual goes on to say that "the intermediary will rule the stay unnecessary only when hospitalization for three days represents a substantial departure from normal medical practice." The latter language was originally developed specifically to address "really extreme cases that involve a clear attempt to game the Medicare program," the CMS representative pointed out.

Thus, denial of the hospital stay would affect coverage of the related SNF stay only when the Medicare contractor determines the hospitalization "not only failed to qualify for Part A coverage in its own right," but also represents a "substantial departure from normal medical practice," the CMS speaker concluded.

Interpretation a Potential Problem

Denials of hospital stays will, of course, lie in the interpretation of "substantial departure from normal medical practice."

And Anderson reports feeling "a little skeptical" about the issue in terms of who is going to define that term -- and how. "Are the RACs going to apply that standard themselves?" Anderson thinks CMS would have to be involved in such a decision. Consultant **Tim Johnson, MBA**, predicts that a court will end up defining "substantial departure from normal medical practice" in a test case.

Experts Discuss Proactive Strategies

Meantime, what can a SNF do to protect itself from a denied inpatient hospital stay that could retroactively jeopardize coverage of the SNF stay? Some have suggested SNFs could do preadmission reviews to identify cases that clearly don't meet medical necessity requirements for inpatient hospitalization (for more information, see "Preempt Payment Recoupments and Worse With This RAC Risk Management Plan" in MDS Alert, Vol. 7, No. 5, available in the Online Subscription System).

"The SNF could put some form of legal framework in place where the SNF made the hospital certify that the stay was medically necessary," says Johnson, executive director of Castle Rock Medical Group in Denver.

"It's difficult to do, however, because the SNF is receiving referrals from the acute care hospital."