

Application of the “Two-Midnight Rule” to TKA Procedures

CMS Regulations and Guidance

Determining Whether TKA May Be Performed Inpatient or Outpatient

- “We continue to believe that the decision regarding the most appropriate care setting for a given surgical procedure is a complex medical judgment made by the physician based on the beneficiary’s individual clinical needs and preferences and on the general coverage rules requiring that any procedure be reasonable and necessary. We also reiterate our previous statement that the removal of any procedure from the IPO list does not require the procedure to be performed only on an outpatient basis.” *2018 Medicare OPPS Final Rule, 82 Fed. Reg. 52,523 (Nov. 13, 2017) (emphasis added).*
- “We also continue to believe that there are a subset of Medicare beneficiaries with less medical complexity who are able to receive this procedure safely on a hospital outpatient basis and that providers should adopt evidence-based patient selection protocols to appropriately identify these patients. As previously noted, removal of a procedure from the IPO list does not require the procedure to be performed only on an outpatient basis. Rather, it allows payment to be made under the OPSS when the procedure is performed on a hospital outpatient. In addition, we expect that physicians will continue to exercise their complex medical judgment, based on a number of factors, including the patient’s comorbidities, the expected length of stay in the hospital (in accordance with the two-midnight rule), the patient’s anticipated need for postoperative skilled nursing care, and other factors.” *2018 Medicare OPSS Final Rule, 82 Fed. Reg. 52,524 (Nov. 13, 2017) (emphasis added).*
- “We remind commenters that the “two- midnight” rule continues to be in effect and was established to provide guidance on when an inpatient admission would be appropriate for payment under Medicare Part A.” *2018 Medicare OPSS Final Rule, 82 Fed. Reg. 52,523 (Nov. 13, 2017) (emphasis added).*

When Will Medicare Reimburse an Inpatient Stay that Spans Less than 2 Midnights?

- “Where the admitting physician expects a patient to require hospital care for only a limited period of time that does not cross two midnights, an inpatient admission may be appropriate for payment under Medicare Part A based on the clinical judgment of the admitting physician and medical record support for that determination. The physician's decision should be based on such complex medical factors as patient history and comorbidities, the severity of signs and symptoms, current medical needs, and the risk of an adverse event. In these cases, the factors that lead to the decision to admit the patient as an inpatient must be supported by the medical record in order to be granted consideration.” *42 C.F.R § 412.3(d)(3) (emphasis added).*

- **“Physician-Identified Case-by-Case Exceptions to the Two-Midnight Rule**
 - “For hospital stays that are expected to span less than two midnights, an inpatient admission may be payable under Medicare Part A on a case-by-case or individualized basis if the medical record supports the admitting physician/practitioner’s judgment that the beneficiary required hospital care on an inpatient basis despite the lack of a two-midnight expectation.
 - “Medicare contractors shall consider, when assessing the physician’s decision, complex medical factors including, but not limited to:
 - The beneficiary history and comorbidities;
 - The severity of signs and symptoms;
 - Current medical needs; and
 - The risk of an adverse event.
 - “Medicare contractors shall note *CMS’ expectation that stays under 24 hours would rarely qualify for an exception to the two- midnight benchmark*, and as such, may be prioritized for medical review.” *Medicare Program Integrity Manual Ch. 6 § 6.5.2 (E)(3) (emphasis added)*.
- “In general, [the two-midnight rule] guidance provides that [:]
 - “If the physician expects the beneficiary to require hospital care that spans at least 2 midnights and admits the beneficiary based upon that expectation, the case is appropriate for payment under the IPPS . . .
 - “For stays for which the physician expects the patient to need less than two midnights of hospital care, *an inpatient admission is payable under Medicare Part A on a case-by-case basis if the documentation in the medical record supports the admitting physician’s determination that the patient requires inpatient hospital care.* This documentation and the physician’s admission decision are subject to medical review.” *82 Fed. Reg. 52,532 (Nov. 13, 2017) (emphasis added)*.
- “For payment purposes, the following factors, among others, would be relevant to determining whether an inpatient admission where the patient stay is expected to be less than two midnights is nonetheless appropriate for Part A payment:
 - “The severity of the signs and symptoms exhibited by the patient;
 - “The medical predictability of something adverse happening to the patient; and
 - “The need for diagnostic studies that appropriately are outpatient services (that is, their performance does not ordinarily require the patient to remain at the hospital for 24 hours or more).” *80 FR 70541 (Nov. 13, 2015)*

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- “CMS is reiterating the expectation that it would be rare and unusual 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.” *CMS Fact Sheet: Two-Midnight Rule (July 1, 2015) (emphasis added)*.