The Two-Midnight Rule FAQ: 2025 Update and Implications for MA Organizations

May 2026

Due to ongoing confusion on the application of the “Two-Midnight Rule” to Medicare Advantage Organizations (MAOs), the following guidelines were developed.

Q1: What is the Two-Midnight Rule (TMR)?

A1: The TMR is guidance for inpatient hospital admittance and includes two key elements, a benchmark and a presumption:

1. **Two-Midnight Benchmark** – A MA plan must provide coverage (by furnishing, arranging, or paying) for an inpatient admission when — based on consideration of complex medical factors documented in the medical record — the admitting physician expects the patient to require hospital care that **crosses two midnights**.
2. **Two-Midnight Presumption** – Hospital stays that cross two midnights after a patient has been admitted as an inpatient generally are considered payable under Part A and insulated from traditional or original Medicare reviews.

Q2: How does the Two-Midnight Rule apply to MAOs?

A2: Before 2024, the TMR applied only to traditional Medicare. In the 2024 Final Rule, the TMR generally applies to MAOs, bringing them into closer alignment with traditional Medicare. However, CMS instructions to traditional Medicare contractors regarding how to prioritize medical claim reviews do <u>**not**</u> apply to MAOs. That is, the CY2024 MA/PD Final Rule makes it clear that:

- **MA plans are allowed to perform clinical review of inpatient hospital stays for medical necessity even if the Two-Midnight Presumption threshold is met.**

The Rule is clear that the Two-Midnight Presumption applies only to traditional Medicare and is not always applicable to MAOs.

This position was reiterated in the CY2026 Medicare Advantage/Prescription Drug Final Rule, which explicitly stated:

> MA organizations are <u>**not**</u> required to use the Two-Midnight Presumption to decide which claims to review, but may instead decide claims are subject to review in accordance with procedures for making determinations… MA organizations may still use prior authorization or concurrent case management review of inpatient admissions to determine whether the complex medical factors documented in the medical record support medical necessity of the inpatient admission under § 412.3. MA medical necessity reviews may be conducted before the service is provided (that is, prior authorization), during (that is, concurrent case review), or after the service is provided (that is, claim review). In all of these circumstances, MA organizations must comply with the rules on medical necessity determinations at § 422.101(c).

Q3: What does this mean??

A3: This means that while MAOs must provide coverage for an inpatient admission where a physician — based on consideration of complex medical factors documented in the medical record — expects the patient to

require hospital care that crosses two-midnights (the Two-Midnight Benchmark), they are not insulated from clinical review (the Two-Midnight Presumption) as they generally are in original Medicare.

Q4: Are there other exceptions to the TMR?

A4: Yes, there are case-by-case exceptions that require inpatient coverage even if the TMR is not met, as follows:

- The expectation of the physician 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. The factors that lead to a particular clinical expectation must be documented in the medical record in order to be granted consideration.

- If an unforeseen circumstance, such as a beneficiary's death or transfer, results in a shorter beneficiary stay than the physician's expectation of at least 2 midnights, the patient may be considered to be appropriately treated on an inpatient basis, and payment for an inpatient hospital stay may be made under Medicare Part A.

- An inpatient admission for a surgical procedure specified by Medicare as Inpatient Only under § 419.22(n) of this chapter is generally appropriate for payment under Medicare Part A regardless of the expected duration of care.

The key for all of these is in appropriate documentation of expectations/factors in the medical record.

MAOs must also follow the CMS Inpatient Only list.

Q5: Are prior authorizations permissible under the TMR?

A5: Yes, as confirmed in the CY2026 guidance, MA organizations may still use prior authorization or concurrent case management review of inpatient admissions to review whether the complex medical factors documented in the medical record support medical necessity of the inpatient admission.

Q6: Does the Two-Midnight Presumption preclude post-service clinical review?

A6: No, MA plans are allowed to evaluate inpatient hospital stays for medical necessity even if the Two-Midnight Benchmark is met.

Q7: Do providers need to submit a concurrent review request?

A7: Yes. There are no changes to this requirement.

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