Kansas Hospital Association

August 19, 2025

Via Email
Administrator Kim Stupica-Dobbs
Regional Administrator
Office of Program Operations
Centers for Medicare & Medicaid Services (CMS)
601 E. 12th St., Room 300
Kansas City, MO 64106
ROKCMORA@cms.hhs.gov

RE: Concerns Regarding Aetna's New Medicare Advantage (MA) Inpatient Payment Policy

Dear Regional Administrator Stupica-Dobbs,

On behalf of the Kansas Hospital Association (KHA) and our member hospitals, I am writing to bring to your attention a serious concern regarding Aetna's recently announced policy change affecting its Medicare Advantage (MA) and Special Needs Plans, scheduled to take effect on November 15.

As described in Aetna's provider bulletin, the policy states that:

- Inpatient admissions spanning at least one midnight will be automatically approved but **paid at the observation rate by default**, unless the admission meets MCG Care Guidelines admission status criteria.
- Payment for inpatient services will be elevated to the contracted inpatient rate only if the severity criteria are satisfied.
- Hospitals would have limited practical ability to contest these payments, as billing systems will treat the difference as a contractual adjustment rather than a denial.

This policy raises several critical concerns:

1. **Subversion of the Two-Midnight Rule**
   CMS's two-midnight benchmark and presumption were intended to provide hospitals and patients with clear, consistent standards for inpatient admission status. Aetna's approach undermines this principle by applying commercial criteria (MCG) to determine payment rates, effectively circumventing the federal standard.
2. **Financial Harm to Hospitals**
   By paying inpatient admissions at the lower observation rate in most circumstances, hospitals will suffer substantial reductions in reimbursement. This threatens financial stability, particularly for rural hospitals that already operate with narrow margins.
3. **Elimination of Meaningful Appeal Rights**
   Because the policy results in "approved" claims paid at lower rates rather than outright denials, hospitals lose the ability to engage in peer-to-peer discussions or pursue traditional appeals. This deprives providers of due process and conflicts with the spirit of CMS guidance requiring fair dispute resolution pathways.

4. **Potential for Industry-Wide Replication**
   If other MA plans adopt similar strategies, the result could be catastrophic for hospitals nationwide, eroding the integrity of CMS's admission standards and the financial viability of hospital services.

While Aetna has characterized this as a technical change, its practical effect is to **reduce payments while avoiding CMS's oversight framework for denials and appeals**. This is precisely the type of policy maneuvering that undermines the intent of federal rules and warrants regulatory scrutiny. A comprehensive list of regulatory requirements that are not being followed includes:

- The admitting physician expects the patient to require hospital care that crosses two midnights (§ 412.3(d)(1
- The admitting physician does not expect the patient to require care that crosses two midnights, but determines, based on complex medical factors documented in the medical record that inpatient hospital care is nonetheless necessary (§ 412.3(d)(3)); or
- inpatient admission is for a surgical procedure specified by Medicare as inpatient only (§ 412.3(d)(2)).

We respectfully urge CMS to:

- Issue clear guidance reaffirming that MA organizations may not use commercial criteria to circumvent the two-midnight rule's intent.
- Require MA plans to maintain transparent appeal processes for any payment reductions tied to admission status.
- Closely monitor Aetna's implementation of this policy and intervene as necessary to ensure compliance with Medicare law and CMS regulations.

Hospitals are committed to providing high-quality care to Medicare beneficiaries. We ask CMS to ensure that MA plans uphold federal standards that protect both patients and providers.

We appreciate your leadership on this issue and stand ready to provide additional information or testimony as needed.

Sincerely,

Shannan Flach
Vice President, Healthcare Finance and Reimbursement
Kansas Hospital Association