EHR Client Bulletin:

Answers to Your Most Frequently Asked Condition Code 44 Questions

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UPDATE: The following EHR Client Bulletin was issued on January 11, 2010 following the release of CMS Transmittal 1803. Since the release of this bulletin, CMS issued Transmittal 2296, which provided further clarification surrounding the use of Condition Code 44.

EHR Client Bulletin
Answers to Your Most Frequently Asked Condition Code 44 Questions
February 24, 2010

EHR often receives questions related to the proper utilization of Condition Code 44. We received a number of questions on this subject after the release of our January 11, 2010 Client Bulletin regarding CMS Transmittal 1803 (which can be found online in the EHR Compliance Library). As a result, we have decided to use this Client Bulletin to help answer the most frequently asked questions we received from you, our most valued clients.

While we at EHR have prepared this Client Bulletin as a response to our clients’ most frequently asked Condition Code 44 questions, we understand that no document can cover every possible question on Condition Code 44. If you do not find the answer to your Condition Code 44 question here, we invite you to email our team at info@ehrdocs.com.

1. Can a case management or utilization review (UR) nurse act as a substitute for a doctor or for the hospital’s UR Committee and change a patient’s status from inpatient to outpatient through the use of Condition Code 44? Can the attending physician, on his/her own, without involvement of the UR Committee, make a determination that an admission is not medically necessary and change a patient’s status from inpatient to outpatient status with observation services?

The answer to both questions is “no.” CMS recently published FAQ 9972 addressing this issue. The CMS website posts the FAQ and response as:

Q: May a hospital change a patient's status using Condition Code 44 when a physician changes the patient's status without utilization review (UR) committee involvement?

A: No, the policy for changing a patient's status using Condition Code 44 requires that the determination to change a patient's status be made by the UR committee with physician concurrence. The hospital may not change a patient's status from inpatient to outpatient without UR committee involvement. The conditions for the use of Condition Code 44 require physician concurrence with the UR committee decision. For Condition Code 44 decisions, in accordance with 42 CFR 482.30(d)(1), one physician member of the UR committee may make the determination for the committee that the inpatient admission is not medically necessary. This physician member of the UR committee must be a different person from the concurring physician for Condition Code 44 use, who is the physician responsible for the care of the patient. For more information, see the Medicare Claims Processing Manual (Pub. 100-04), Chapter 1, Section 50.3.2 (When an Inpatient Admission May Be Changed to Outpatient Status).
2. **What happens if the doctor changes his/her mind about a patient’s admission status without prompting from case management or the UR Committee?** For example, the doctor writes admit orders and then, 16 hours later, after the physician reassesses the patient, he/she writes an order to “change status to observation from beginning and discharge”?

Condition Code 44 and 42 CFR Section 482.30 specify that, once the attending physician has written an order to admit to inpatient, the patient’s status cannot be changed to outpatient with observation services unless the UR Committee is involved. The response given in the aforementioned CMS FAQ 9972 would apply to this scenario.

3. **Condition Code 44 requires we notify our patients of a change in status and inform them of their financial responsibilities. Are there materials available that would help us better explain this complex subject to them?**

In December 2009, CMS published an informational pamphlet for patients titled, “Are You a Hospital Inpatient or Outpatient?” (CMS Product No. 11435), which can be found on the CMS website. This pamphlet reviews the difference between inpatient status and outpatient status with observation services and summarizes the implications for the patient. As a case management professional, you are probably already aware of these issues – the difference between the inpatient deductible and the outpatient co-pay (and the fact that multiple co-pays can add up to quite a bit more than the inpatient deductible in certain situations), as well as the non-coverage in outpatient status of self administered drugs or subsequent skilled nursing facility services.

This pamphlet can be used when informing beneficiaries of their financial responsibilities or a change in claim status. Some of EHR’s hospital clients have stated that they intend to use this document as the formal notice required by Condition Code 44. In addition, this document can and should be shared with treating physicians to help them better understand the implications of patient claim status assignment that impact them, as well as their patients.

4. **Does the patient notification surrounding Condition Code 44 need to be a written notification? And, what level of documentation is required in the patient’s medical chart?**

This question was addressed in the CMS Hospital & Hospital Quality Open Door Forum, which was held on January 14, 2010. In response to a question regarding documentation of the decision to change claim status, CMS Staff Member Heather Hostetler responded:

“The guidance was general in the manual. It just says that the determination needs to be documented in the patient’s medical record allowing the concurrence from the physician and the condition of participation requires that when a decision is made about a patient’s admission or continued stay that written notification has to be given to the hospital, the physician and the patient within two days of the decision.”
This statement, consistent with and supported by MLM SE0622 and 42 CFR Section 482.30, indicates that written documentation must be given to the patient. EHR advises that case managers and/or utilization management personnel should also document that the patient was notified of the status change. Some hospitals have chosen to use a specific form, which is good practice as it can also be used to inform other appropriate hospital claim compliance stakeholders that a change has been made. In performing audits, EHR has seen numerous situations in which Condition Code 44 requirements were met and documented, but not reflected in the claim. A specific form would also help to reduce these instances. One EHR hospital client goes so far as to make this a pink form so that it is easily recognized by all hospital stakeholders.

5. In regard to the physician documentation required to verify concurrence with the UR committee decision, would it be acceptable to note that in the order for status change? For example, “Physician concurs with the UR decision to change patient status to inpatient level of care”, or is a separate progress note required?

CMS instructions are vague regarding physician documentation requirements. EHR has not seen examples of claim denials when there is a strong physician advisor note explaining the medical necessity determination of claim status and there is a supporting order from the treating physician indicating his or her agreement. There is not a specific rule that mandates that the attending physician needs to document the reason for the change. Some medical staffs have required that their treating physicians co-sign the EHR physician advisor medical necessity status document, indicating their concurrence with the opinion. Of course, the body of clinical documentation in the chart must support the medical necessity claim status.

6. Does the actual documentation showing concurrence between the attending physician and UR physician have to be completed by one of the physicians, or can there be a case manager note referring to the process that took place?

As stated above, the EHR Physician Advisor document has sufficed thus far, and there is no guidance specifying what precise documentation is needed from the treating physician. Any change in order by the treating physician should provide clear indication of physician intent and must be supported by the chart documentation. EHR recommends having more than just a note from the case manager, since that would not necessarily demonstrate that the two physicians were involved in the status assignment in compliance with the hospital Conditions of Participation.

7. Does Condition Code 44 apply for Medicaid as well?

No, Condition Code 44 does not apply to Medicaid. The rules we address in this Client Bulletin and our January 11, 2010 Client Bulletin on CMS Transmittal 1803 (which can be found online in the EHR Compliance Library) are specific for fee-for-service Medicare. These rules are found in the Medicare Claims Processing Manual. The requirements for UR, the UR Committee, and claim status assignment and changes for Medicaid are state-dependent.
8. With approval from our Medical Executive Committee, our hospital initiated “Admit per case management protocol” a few years ago. Does the admitting/attending physician still need to sign the order?

The Admit per Case Management protocol has come under some fire with the transition to Medicare Administrative Contractors (MACs). Quality Improvement Organizations (QIOs) have approved such protocols in the past, but they no longer have this authority under the 9th Scope of Work. Several MACs have indicated that, until the attending physician signs the case manager order, the admission is not considered to have started. This could adversely affect reimbursement related to Transfer DRG calculations and “qualifying hospital stays.” Check with your MAC on its policy regarding Admit per Case Management protocol.

9. Our current UR plan states that, when the attending physician disagrees with an admission order, we have two UR doctors review the case to make the determination. If the two UR physicians concur, their decision overrides the attending. Is this in compliance with regulatory guidelines?

It is correct to have a second UR physician review when the attending physician disagrees with the first UR physician. However, at this time, you cannot use Condition Code 44 unless the physician responsible for the care of the patient agrees with less than inpatient status.