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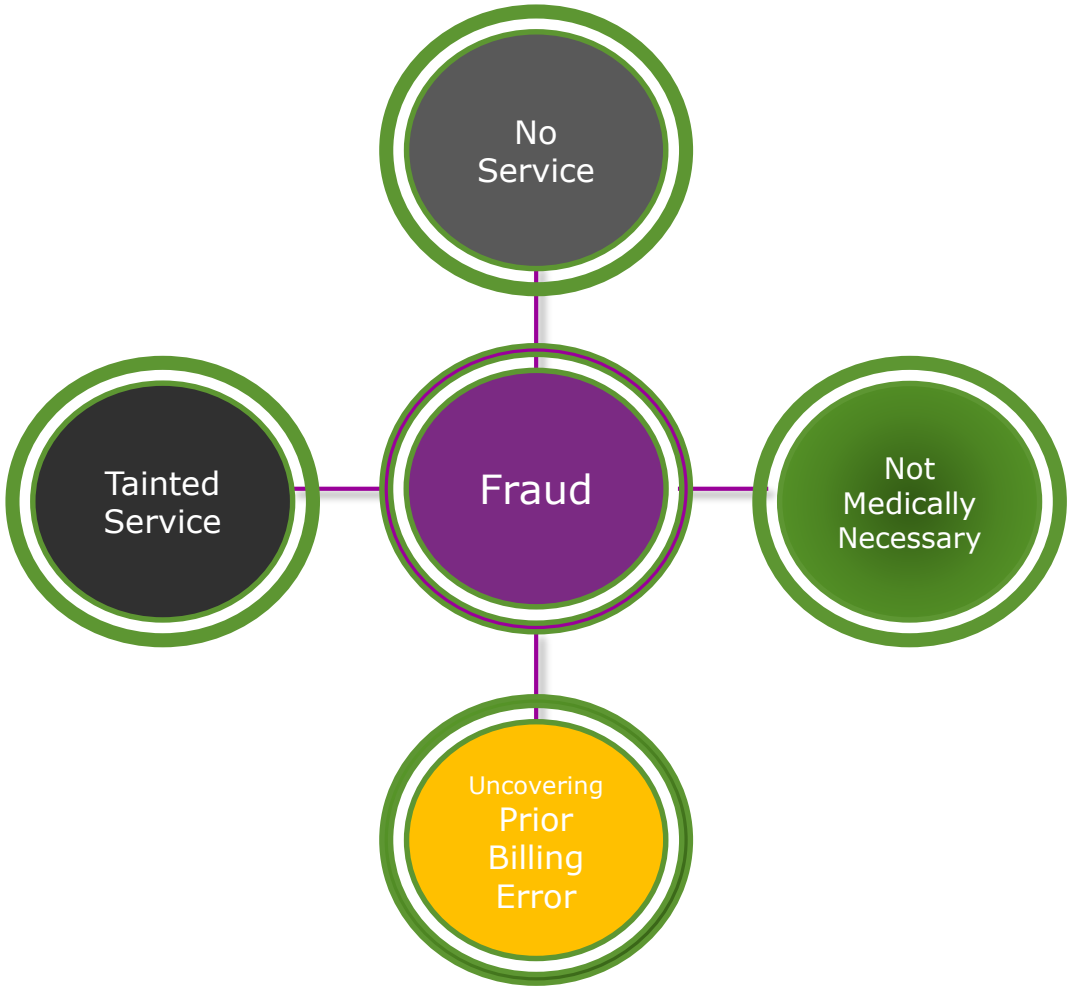
Reducing False Claim Liability For Medicare Inpatient Admissions

Presented to:

TAHFA Texas Association for Healthcare Financial Administration

Gregory Palega, MD, JD
Medical Director of Regulatory Affairs
Gpalega@MedManagementLLC.com
205.313.6648

Actively Seek Out and Prevent Fraud



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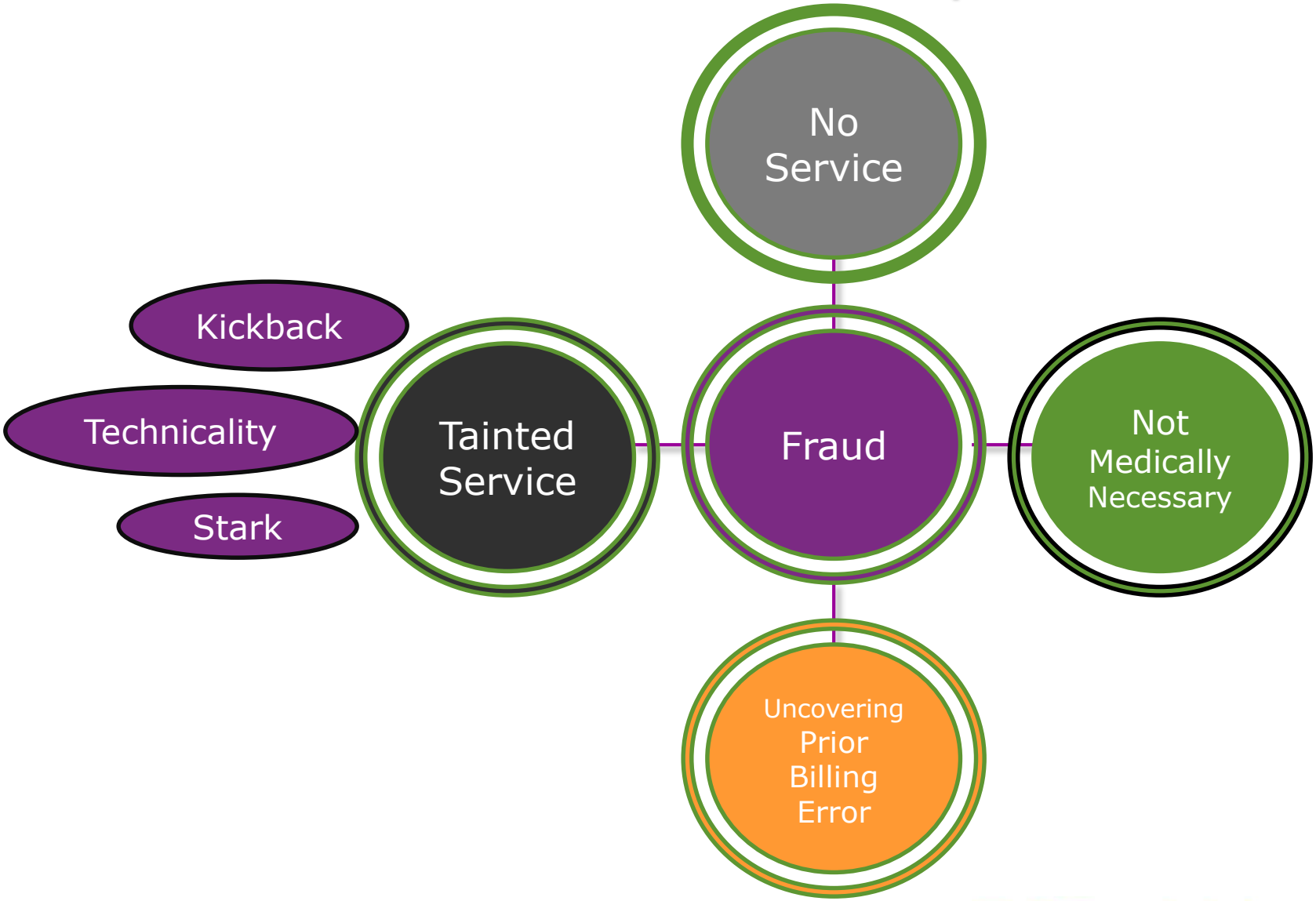
Medicare and Medicaid Fraud Spectrum



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Do You Know What is Necessary?

So, What is Medical Necessity?

Title XVIII of the Social Security Act, Section 1862(a)(1) states:

"No Medicare payment shall be made for items or services

which are not reasonable and necessary for the diagnosis or treatment of illness or injury"

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What Is Reasonable and Necessary about Inpatient Status?

- Clearly an Inpatient

- Clearly an Outpatient (receiving observation)

When you can do the same things in Outpatient status?

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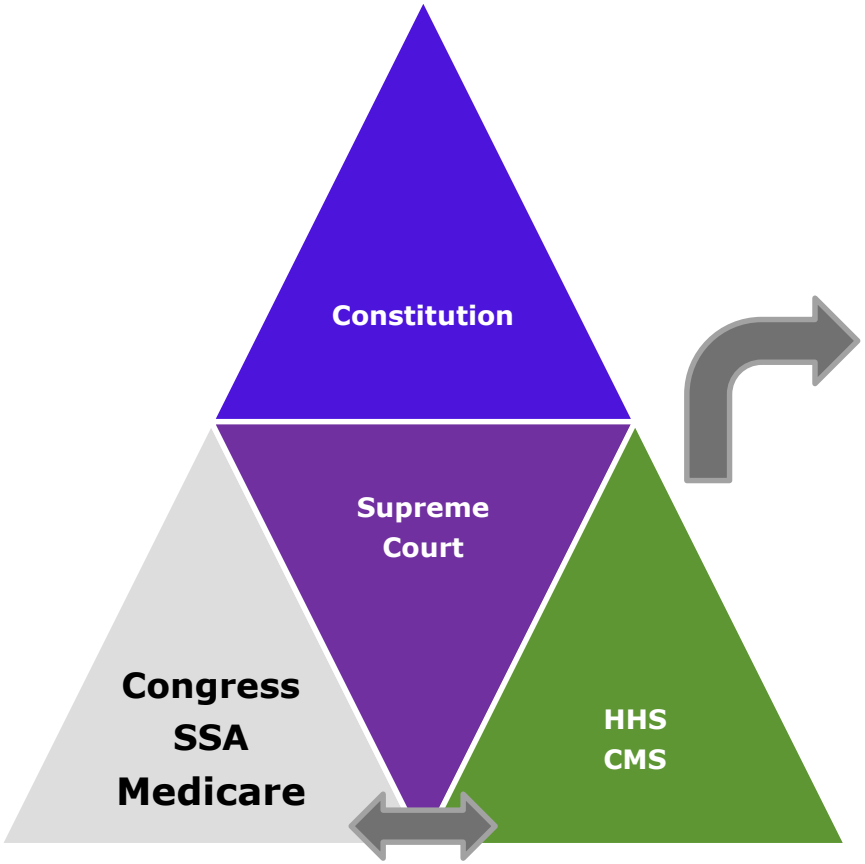
Old Medicare Regulatory Framework



CMS
- Medical Necessity Regulations
- Rulings

CMS
- National
- Coverage
- Determinations
- NCD

CMS
- Manual Guidance
- Education
- Local Contractor LCDs

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The Old Inpatient Necessity Rule

MBPM & SOME LCD S

Physicians should use a 24-hour period as a benchmark, i.e., they should order admission for patients who are expected to need hospital care for 24 hours or more, and treat other patients on an outpatient basis.

PIM & ALL AUDITORS

The beneficiary must demonstrate signs and/or symptoms severe enough to warrant the need for medical care and must receive services of such intensity that they can be furnished safely and effectively only on an inpatient basis.

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Liability for Admissions Before Oct. 2013

- Many Fraud Claims filed based on the old rule
- Many picked up by the US DOJ
- Rarely have I sat across from an MD regarding these claims
- Poor documentation hurts
- Many proper IP admissions conceded

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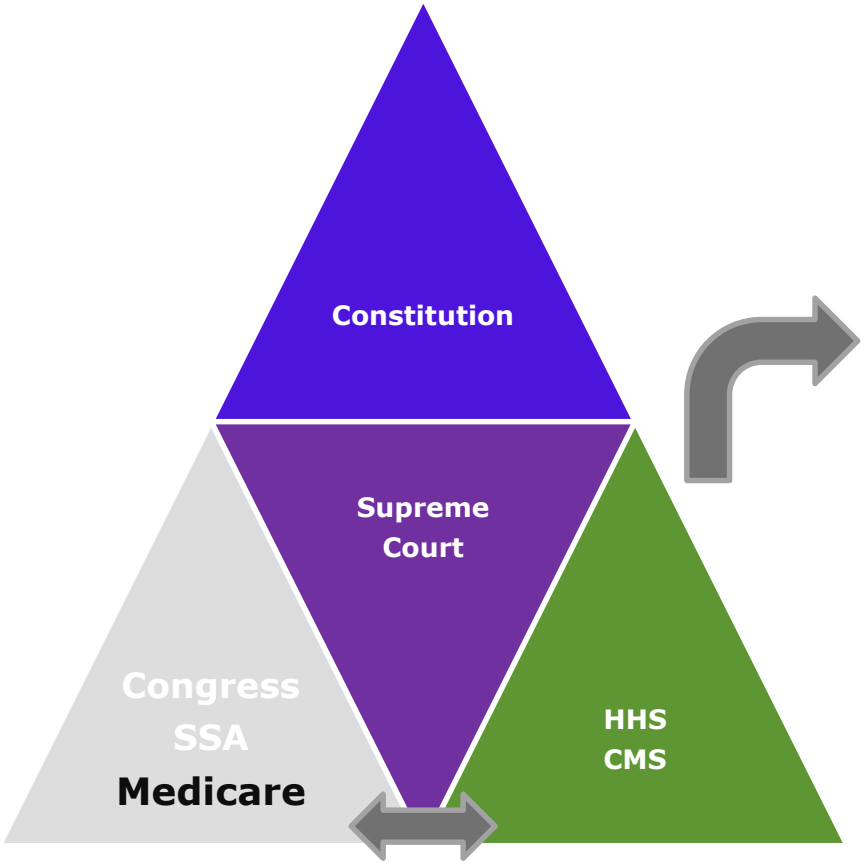
Medicare Regulatory Framework



CMS

- **Medical Necessity Regulations**
- **Two Midnight Rule**

CMS

- National
- Coverage
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CMS

- Manual Guidance
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- Local Contractor LCDs

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What is the Essence of an Inpatient?

- **§ 412.3(a) Formally (*and properly*) admitted as an inpatient**

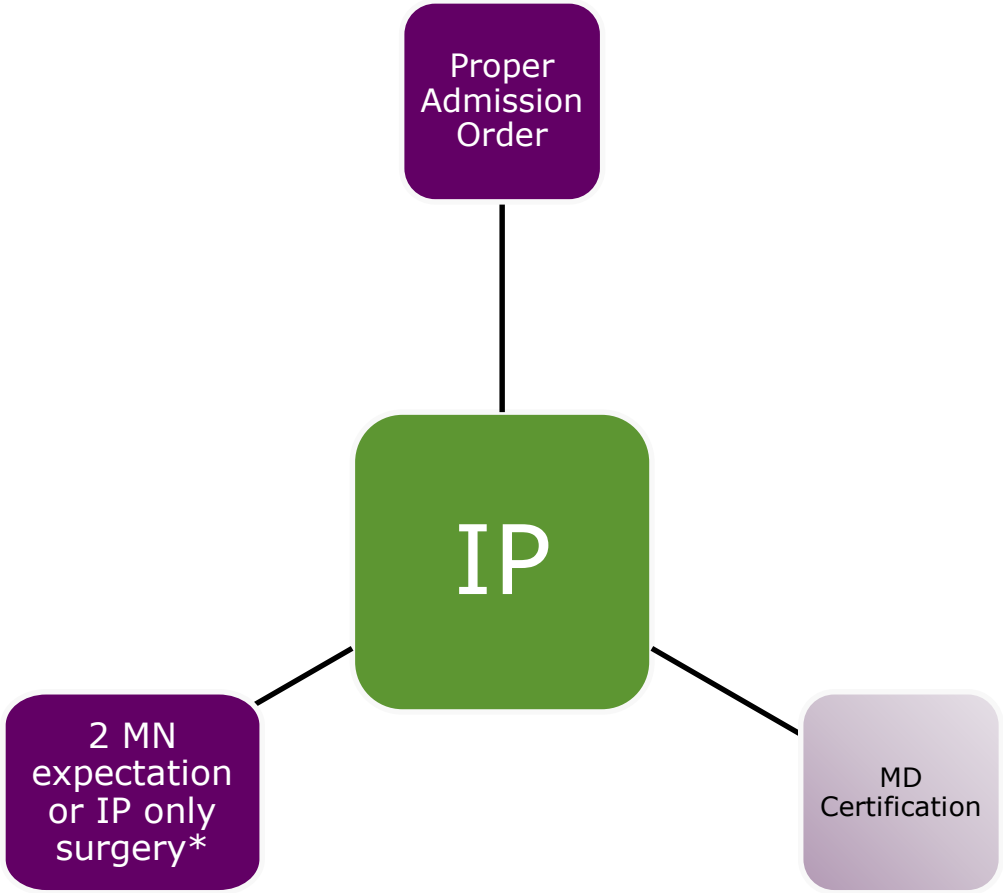
- 42CFR412.3(e) "…Surgical procedures, diagnostic tests, and other treatment are generally appropriate for inpatient admission and inpatient hospital payment under Medicare Part A when the physician expects the patient to require a stay that crosses at least 2 midnights."

- Or, admitted for a surgical procedure on the "inpatient only list."

This "simplification" Opens New Avenues of Liability

- Codified into law- reduces ALJ discretion
- Minor technicalities will probably be strictly enforced
- MD documentation of facts and rationale **more** important
- This does NOT mean all patients staying 2 midnights are Inpatients

Inpatient Status Requires 3 Main Elements



**** Or published exceptions***

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New Admission Order Technicalities

- Order must be by a practitioner with **admitting privileges** (or cosigned by one with admitting privileges) who is knowledgeable about the patient's hospital course, medical plan of care and current condition;
- The order must be signed prior to discharge by a **physician** familiar with the case and authority to admit inpatients.
- Must state "Admit to **Inpatient.**"
- **No delegation of the admission decision allowed.**
- **The necessity of a proper order has been "codified" in the regulations: ALJ and CMS contractors are thus bound- no discretion.**

42 CFR 412.3

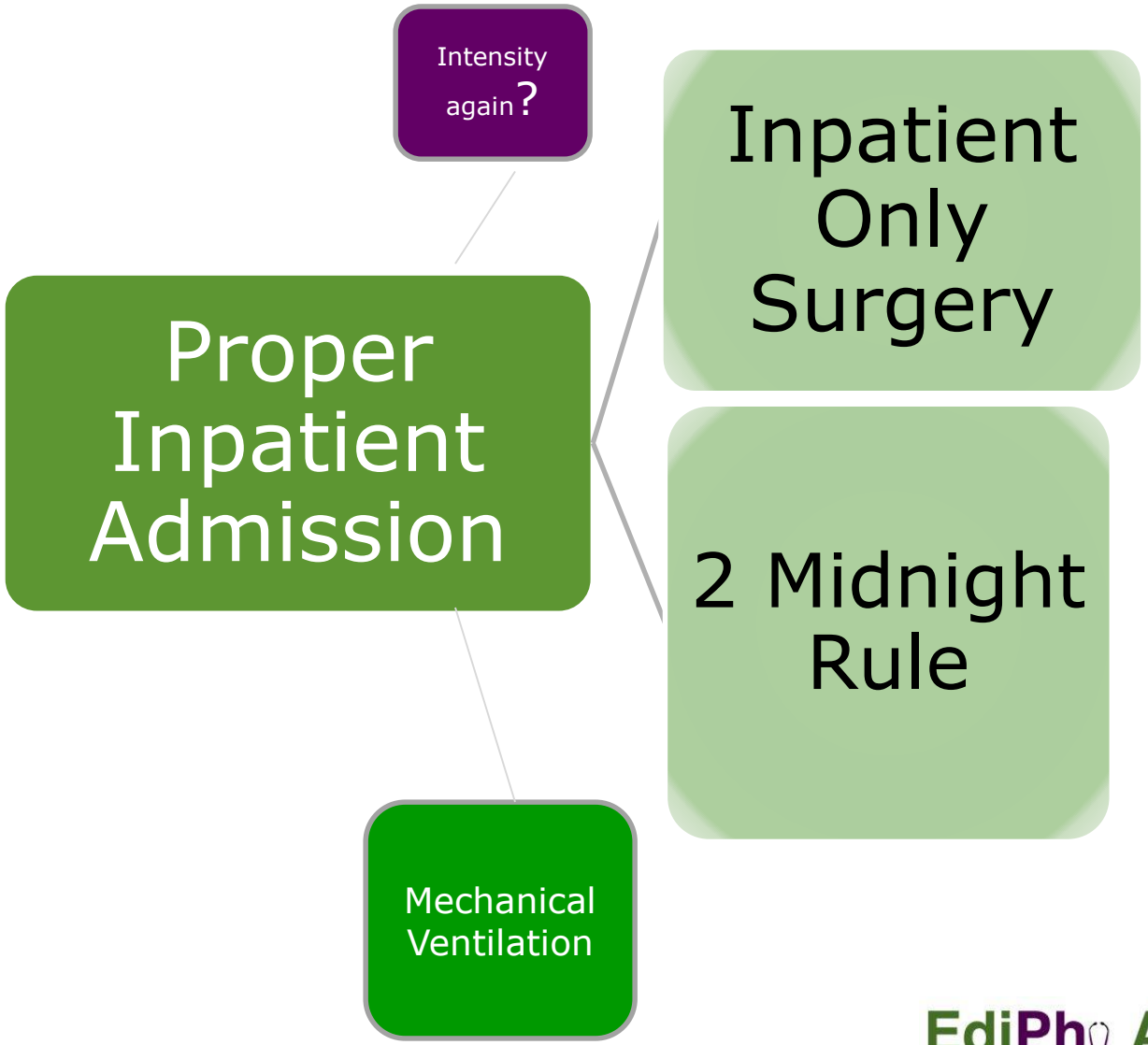
CMS Reiterates the Need for a signed order before discharge

- Although CMS loosened up certification rules, they clearly stated the need for clear and timely signed inpatient admission orders (CMS F-1613)

- "Therefore, we do not believe it is appropriate to change our existing policy which requires that inpatient orders be signed prior to discharge by a practitioner familiar with the case and authorized by the hospital to admit inpatients." (79 Fed. Reg. 66999 (Nov. 10, 2014)).

- CAHs have until billing to sign IP order…

"New" Medical Necessity Requirement



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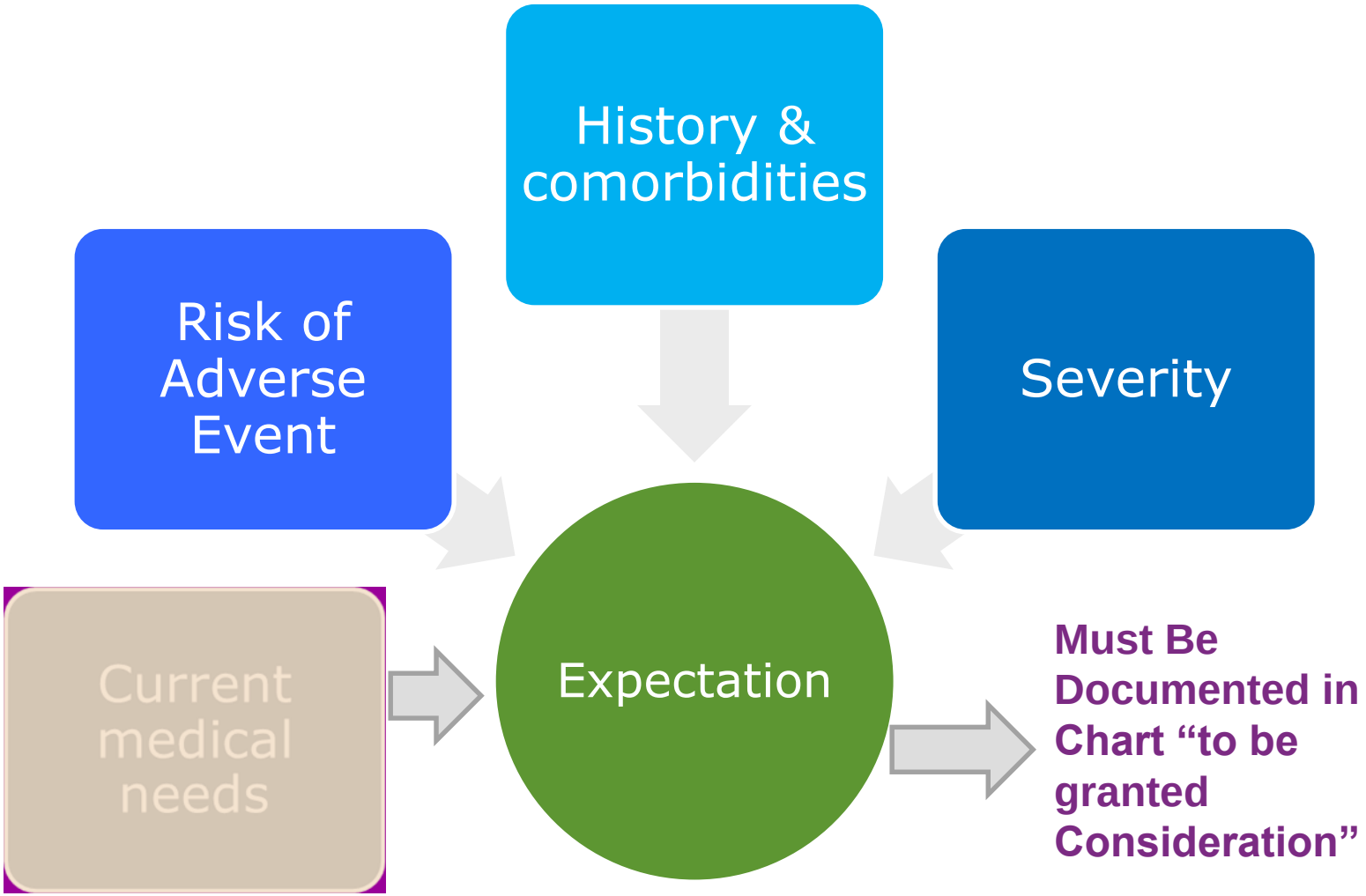
Two Midnights Rule Requires:

- "physician expects the patient to require a stay that crosses at least 2 midnights."

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

42 CFR 412.3(e)(1)

How to Show a Valid Expectation



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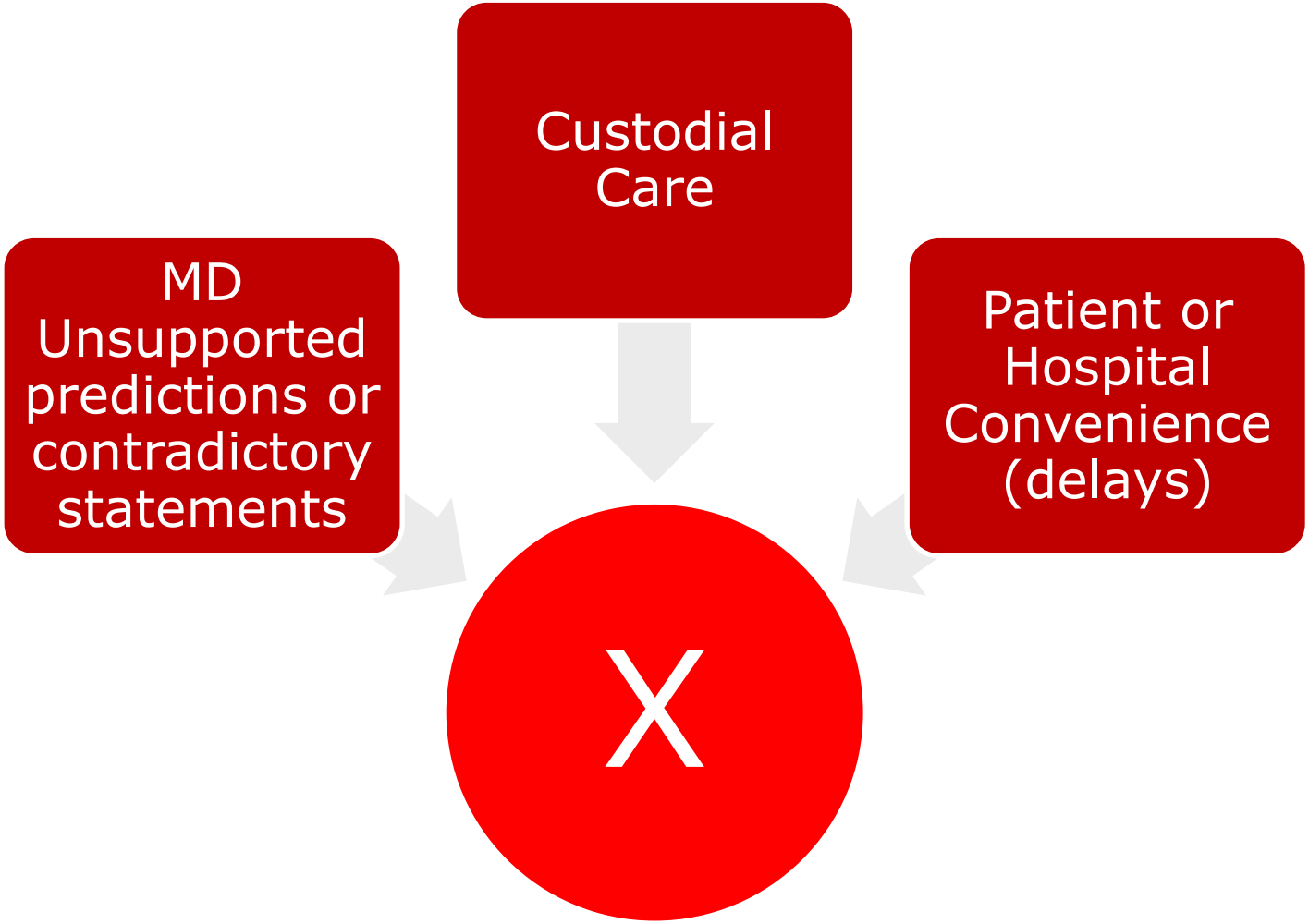
How NOT to Validate the Expectation



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"Exclusions" Trump Card

- Custodial care is excluded from coverage.
- Custodial care serves to assist an individual in the **activities** of daily living, such as assistance in walking, getting in and out of bed, bathing, dressing, feeding, and using the toilet, preparation of special diets, and supervision of medication that usually can be self-administered.
- Custodial care essentially is personal care that does not require the continuing attention of trained medical or paramedical personnel.
- In determining whether a person is receiving custodial care, the intermediary or carrier considers the level of care and medical supervision required and furnished. It does not base the decision on diagnosis, type of condition, degree of functional limitation, or rehabilitation potential.

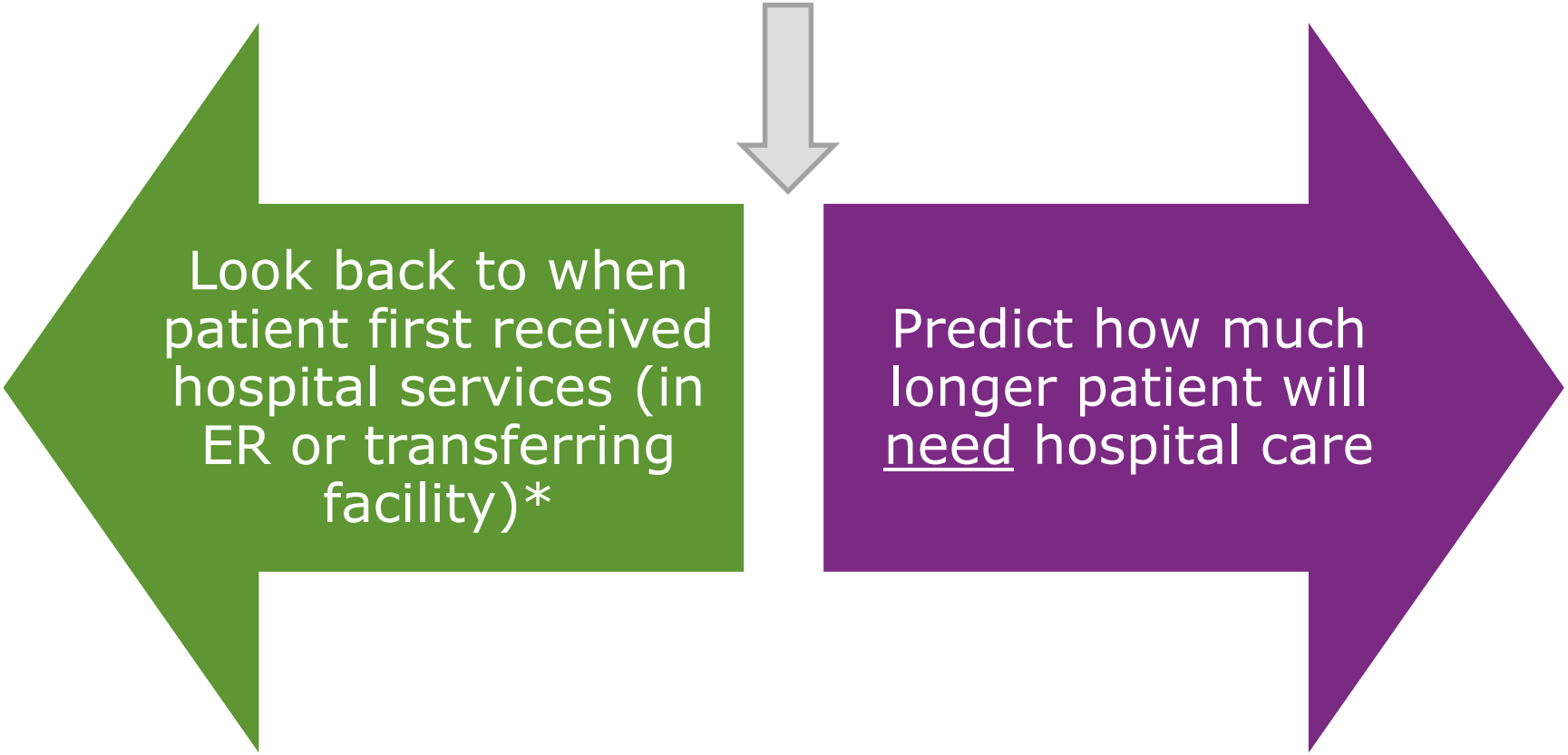
Medicare Benefit Policy Manual
Chapter 16
110 - Custodial Care
(Rev. 1, 10-01-03)
A3-3159, HO-260.10, HO-261, B3-2326

Medical Necessity Requires Substance in addition to the Key Words

- **As Always:**
  - Under the new section 412.46 (b) CMS codifies: "No presumptive weight shall be assigned to the physician's order under Section 412.3 or the physician's certification under Subpart B of Part 424 of this chapter in determining the medical necessity of inpatient hospital services under section 1862(a)(1) of the Act. A physician's order and certification will be evaluated in the context of the evidence in the medical record."

Time Calculation: 2 Midnights Rule

Inpatient Admission order



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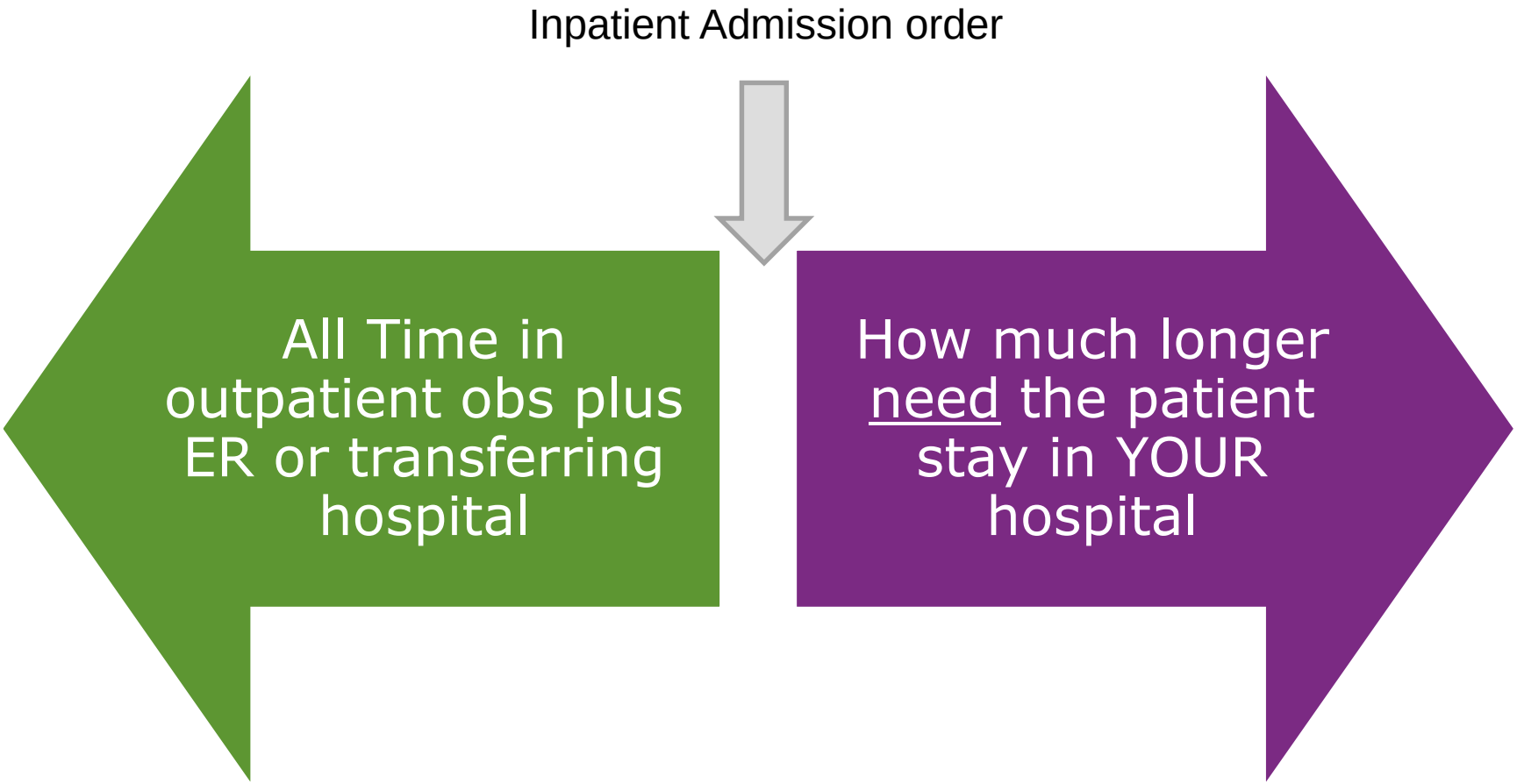
Conversion to Inpatient and 2 Midnights



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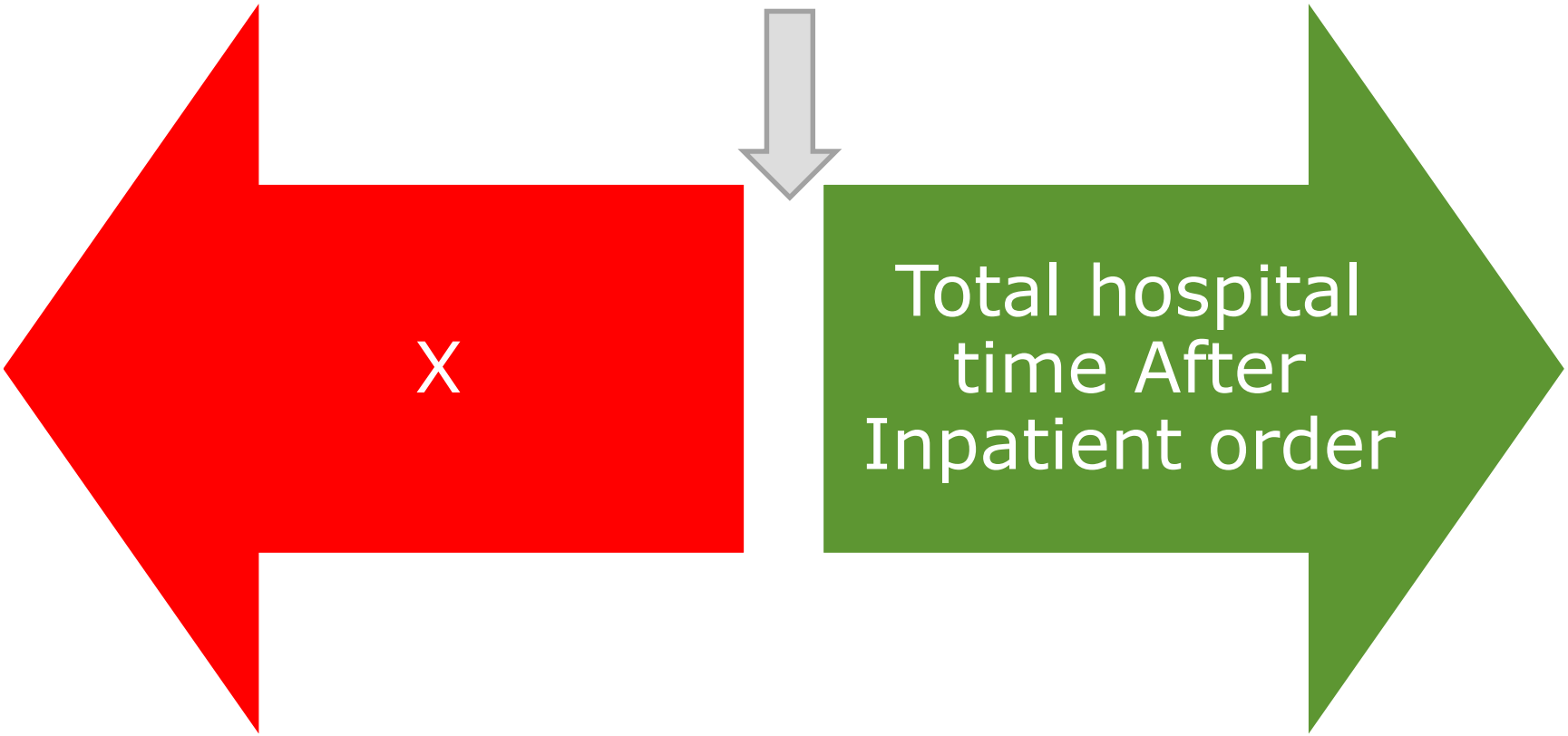
SNF Eligibility

Inpatient Admission order



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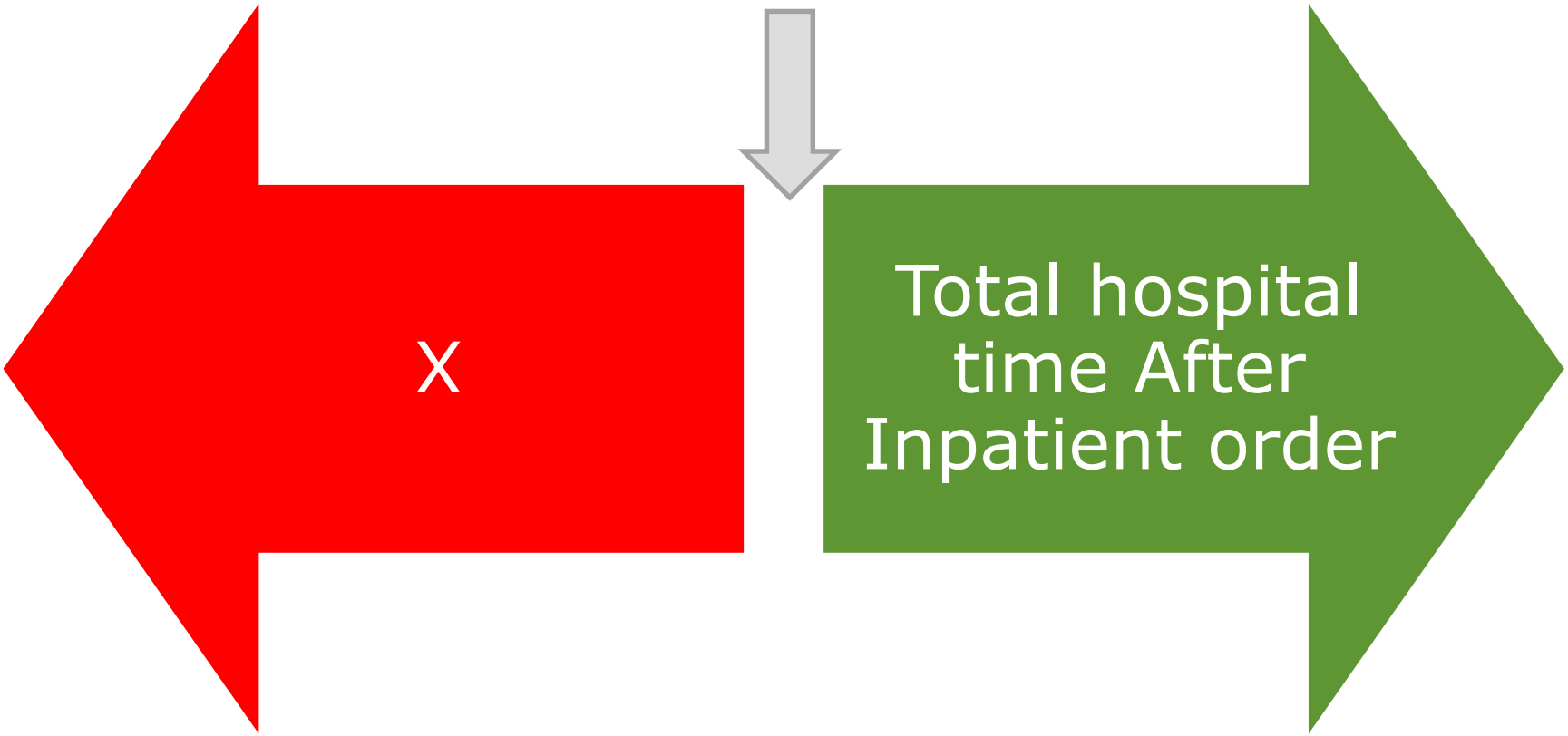
Automatic Audit Protection (Inpatient Presumption in Effect)

Inpatient Admission order



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No Gaming

- **CMS has expressly stated on the record that it will audit hospitals engaged in gaming, abuse or delays in the provision of care in an attempt to qualify for the 2-midnight presumption**

Patient Leaves Early

- You can still bill an inpatient LOC/patient status for patients who are discharged, transferred, or dead before the second midnight if;
  - Proper signed admission order
  - The facts in the record support the expectation that the patient needed hospital care crossing two midnights
- But, expect to get audited…
  - You *might* win the case if the record supports a two midnight expectation at time of admission
  - You have a better chance of winning if you clearly state why the patient left earlier than expected.
  - If MD does not STATE "AMA" it will be argued that patient was medically ready to go.

CMS Website Statements

- "documentation in the medical record must support a reasonable expectation of the need for the beneficiary to require a medically necessary stay lasting at least two midnights. If the inpatient admission lasts fewer than two midnights due to an unforeseen circumstance, this must also be clearly documented in the medical record"
- ~http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/InpatientHospitalReviews.html

Regulations Still Require UR Screening

- Conditions of Participation Mandates UR screening of Admissions
  - 42CFR482.30
- Program Integrity Manual Mandates "shall use a screening tool"
  - PIM section 5.6.1
- MBPM mandates MD final decision based on "complex medical judgment"
  - MBPM chapter 1 section 10.
- CoP mandate MD consent (42CFR482.30(d)(1)
- CMS transmittal prohibits UR changing inpatient to outpatient without MD "concurrence."
  - CMS transmittal 1745
- PIM prohibits decisions on LOC based on screening instrument alone ("in all cases…reviewer applies…
- clinical judgment")
  - PIM section 6.5.1

Regulations Still Require UR Screening

- **New and better role for UR staff- read the record *as an auditor would* and promptly verify the following before discharge:**
- Signed inpatient admission order
- Record clearly indicates a need for two midnights of hospital care
- If patient leaves before 2 midnights, the record shows why the patient left and why it was unexpected

UR staff should Communicate with MD and request additional documentation (or change to OP) if above is not clear.

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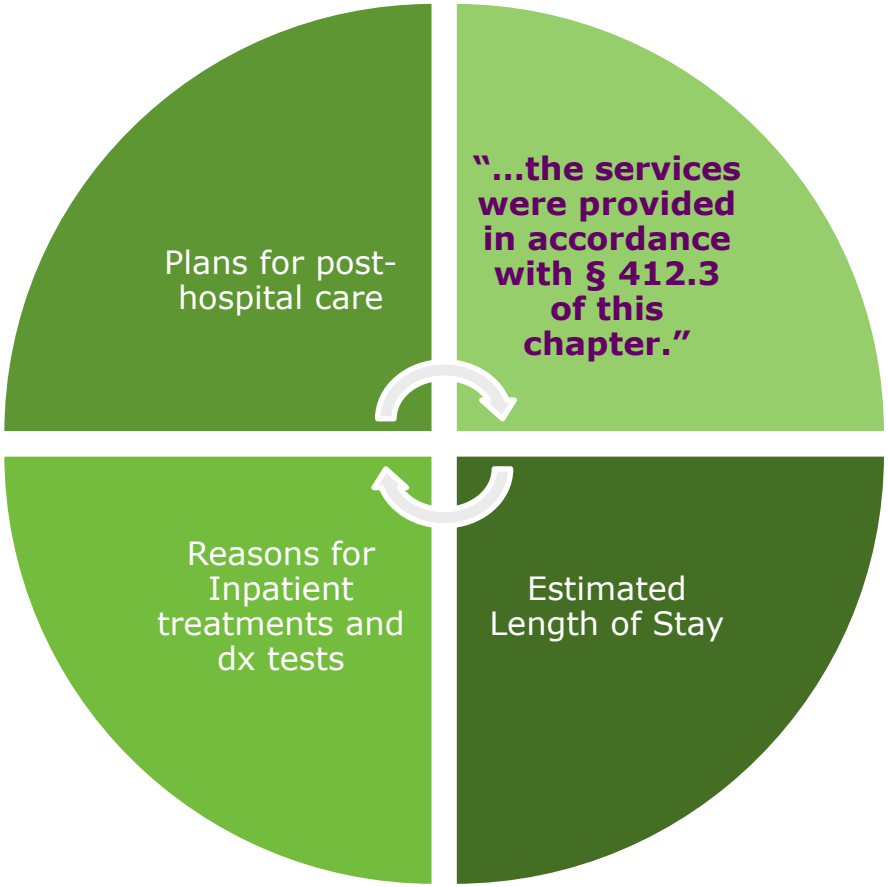
New Certification and Recertification Requirements as of Jan 1, 2015

- No technical "certification" required on post Jan 1, 2015 inpatient admissions….except for long stay and outlier cases.

- "Therefore, we are finalizing the policy as proposed in the CY 2015 OPPS/ASC proposed rule, which limits the requirement for physician certification to long-stay (20 days or longer) and outlier cases." *id.*

FY 2014 Certification and Current **Re**certification Requirements

42 CFR PART 424: CONDITIONS FOR MEDICARE PAYMENT



42 CFR § 424.13

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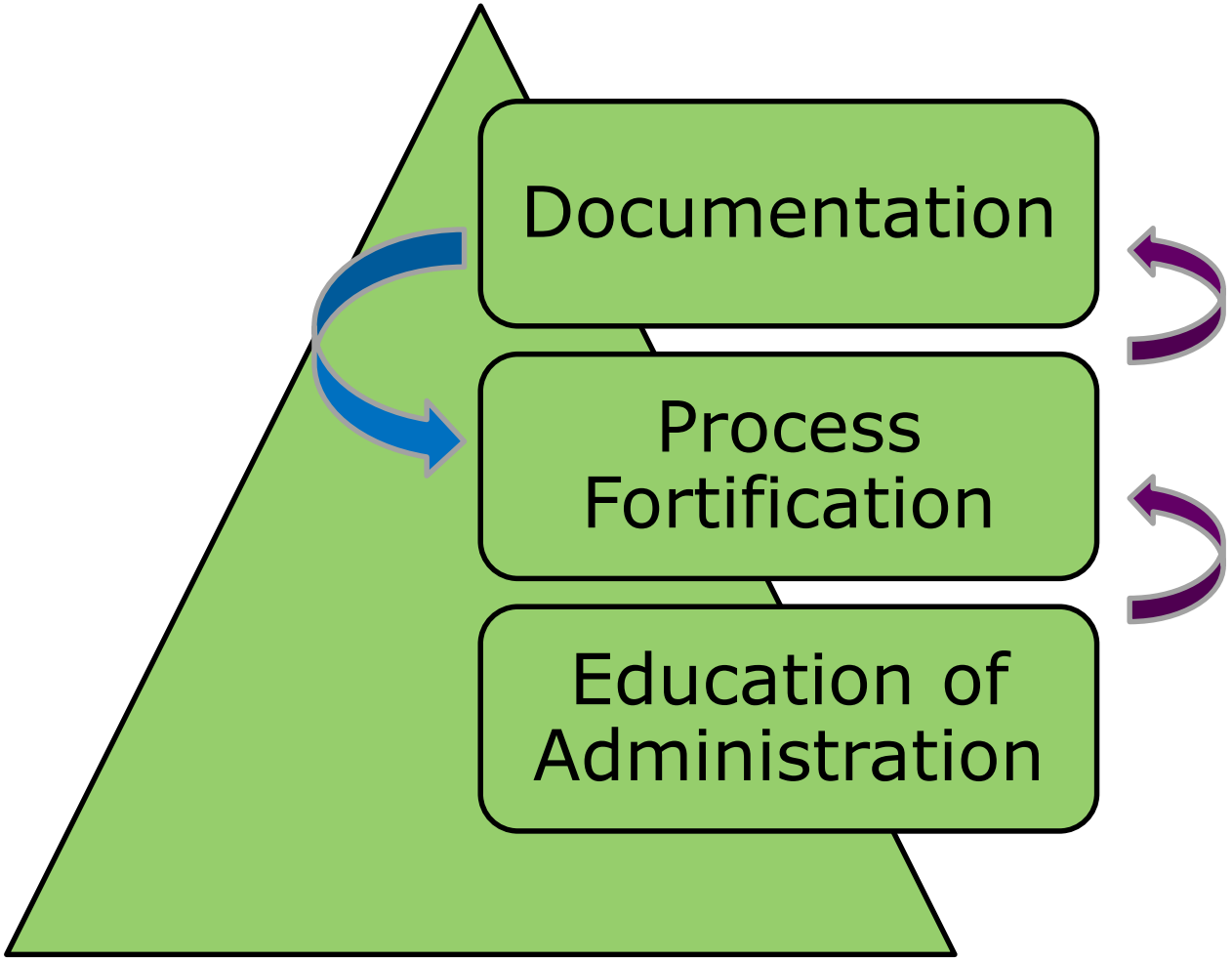
Preventing Billing for Unnecessary Services



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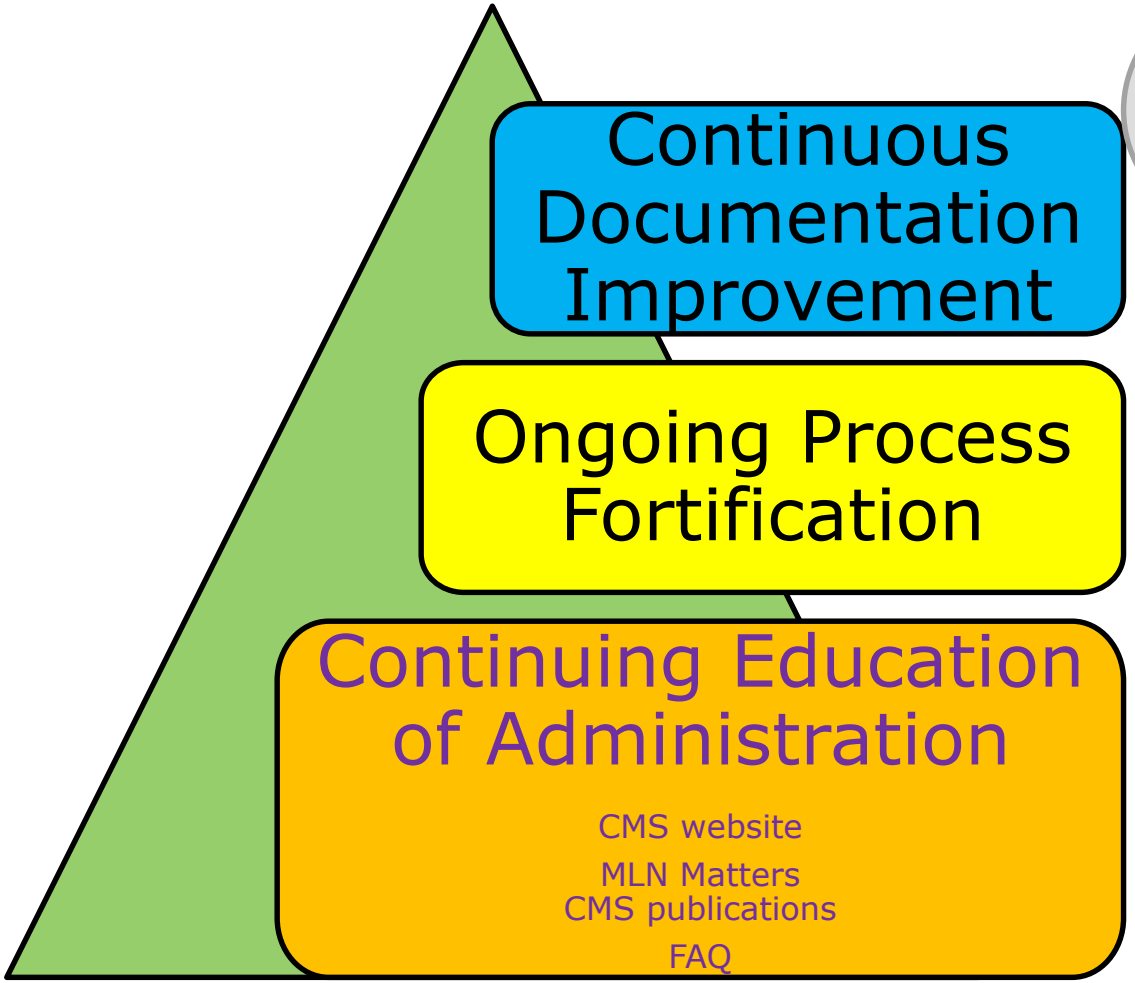
Preventing Billing for Unnecessary Services



Its more like logrolling than climbing a mountain

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Further CMS Guidance

- "With regard to the time of discharge, a Medicare beneficiary is considered a patient of the hospital until the effectuation of activities typically specified by the physician as having to occur prior to discharge (e.g.,"discharge after supper" or "discharge after voids"). So discharge itself can but does not always coincide exactly with the time that the discharge order is written, rather it occurs when the physician's order for discharge is effectuated."

Further CMS Guidance

- CMS has identified the following exception to the 2-midnight rule: 1. **Mechanical Ventilation Initiated During Present Visit:** As noted above, treatment in an ICU, by itself, does not support an inpatient admission absent an expectation of medically necessary hospital care spanning 2 or more midnights. Stakeholders have notified CMS that they believe beneficiaries with newly initiated mechanical ventilation support an inpatient admission and Part A payment. CMS believes newly initiated mechanical ventilation to be rarely provided in hospital stays less than 2 midnights, and to embody the same characteristics as those procedures included in Medicare's inpatient –only list. While CMS believes a physician will generally expect beneficiaries with newly initiated mechanical ventilation to require 2 or more midnights of hospital care, if the physician expects that the beneficiary will only require one midnight of hospital care, inpatient admission and Part A payment is nonetheless generally appropriate.

Proposed Expansion of "Rare and Unusual" Exception to Two Midnight Rule

- CMS will allow for "Medicare Part A payment on a ***case-by-case basis*** for inpatient admissions that ***do not satisfy the Two Midnight Benchmark***, if the documentation in the medical record supports the admitting physician's determination that the patient requires ***inpatient hospital care*** despite an ***expected length of stay that is less than two midnights."***

- **CMS-1633-P**
- ***80 Fed. Reg. 39200, 39350 (Jul. 8, 2015)***

Proposed Expansion of "Rare and Unusual" Exception to Two Midnight Rule

- "The following factors, among others, would be relevant to determining whether an inpatient admission where the patient stay is ***expected to be less than 2 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)."

Proposed Expansion of "Rare and Unusual" Exception to Two Midnight Rule – Medical Review

- Admissions will be reviewed on a *case-by-case* basis.
  - Admissions must be reasonable and necessary and supported by clear ***documentation*** in the patient's medical record.
  - Inpatient admissions that do not span at least one midnight will be prioritized for medical review.
- Review criteria.
  - Medicare review contractors may continue to use commercial screening tools, although not binding.
  - CMS invited "public comments on whether s***pecific medical review criteria should be adopted for inpatient hospital admissions that are not expected to span at least 2 midnights*** and, if so, what those criteria should be."

Proposed Expansion of "Rare and Unusual" Exception to Two Midnight Rule – Medical Review

- Minor surgical procedures or short treatments.
  - CMS would expect it to "be rare and unusual for a beneficiary to require inpatient hospital admission after having 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 plan to prioritize these types of cases for medical review.

Questions?

Gregory Palega, MD, JD
Medical Director of Regulatory Affairs
Gpalega@MedManagementLLC.com
205.313.6648

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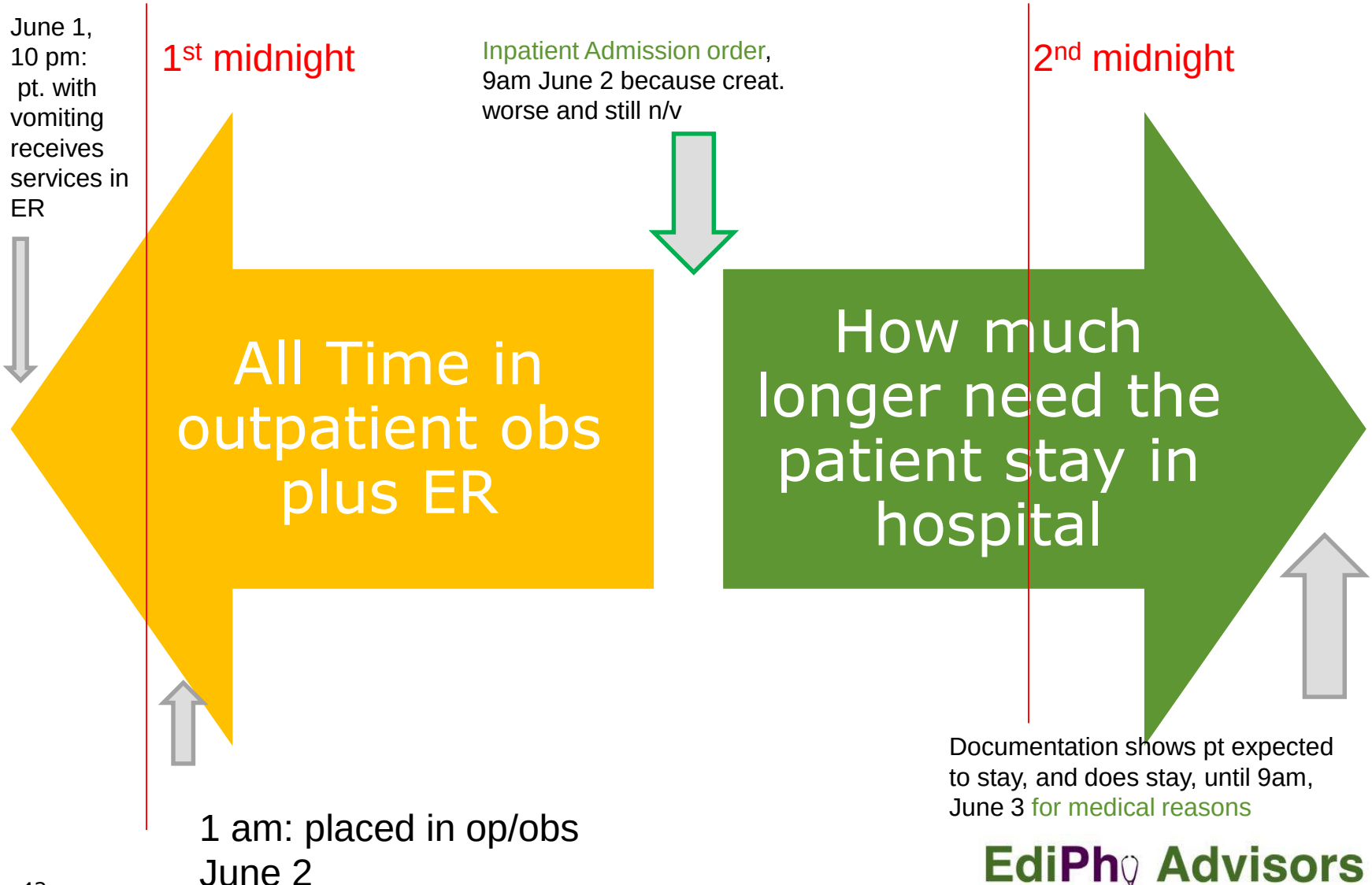
Example 1
Legitimate Inpatient but Will Be Audited



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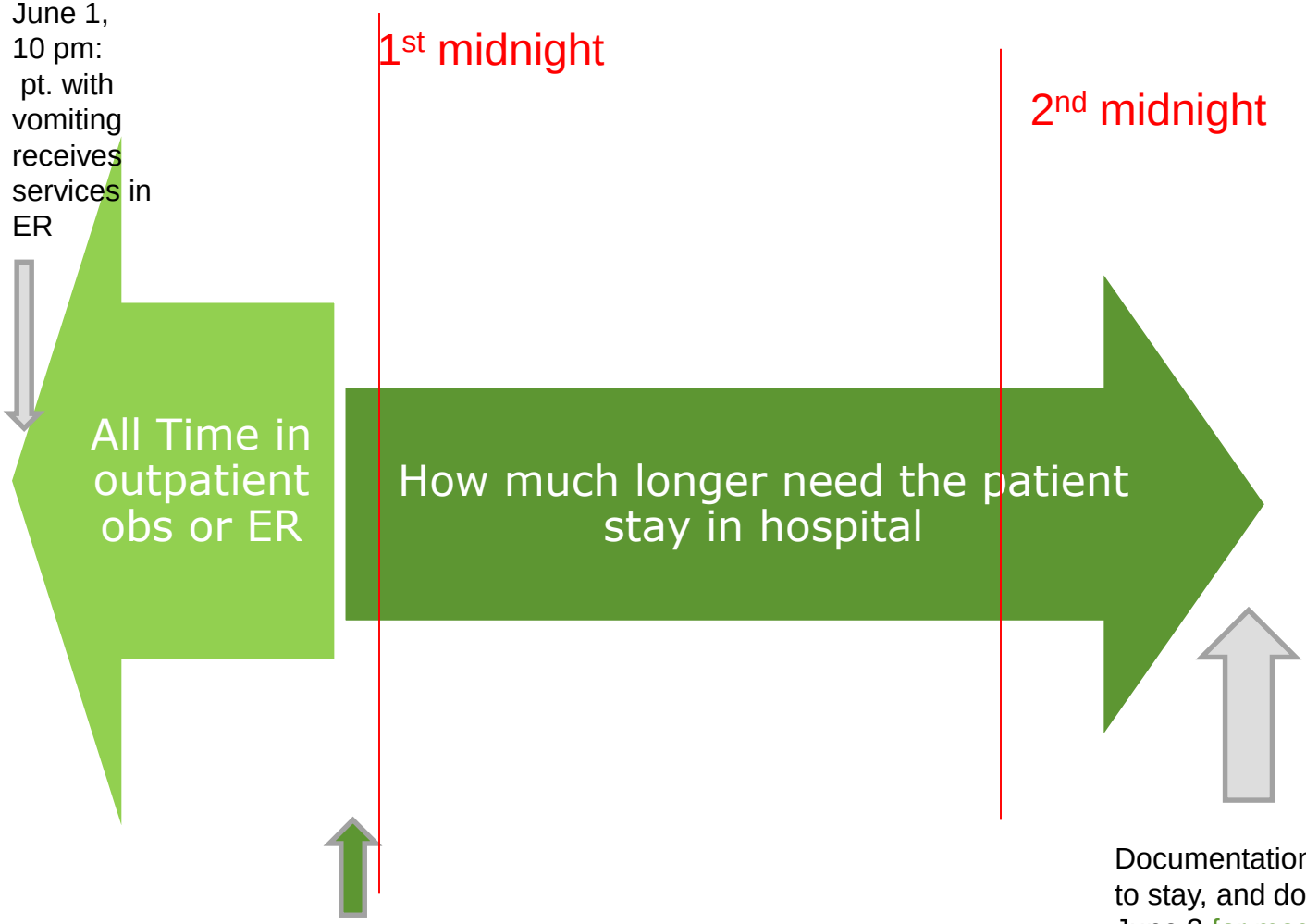
Example 2
Legitimate Inpatient: Will Not Be Audited

June 1, 10 pm: pt. with vomiting receives services in ER



11:45p, June 1 Adm to IP
Documentation shows why pt expected to need hospital care crossing 2 midnights

Documentation shows pt expected to stay, and does stay, until 9am, June 3 for medical reasons

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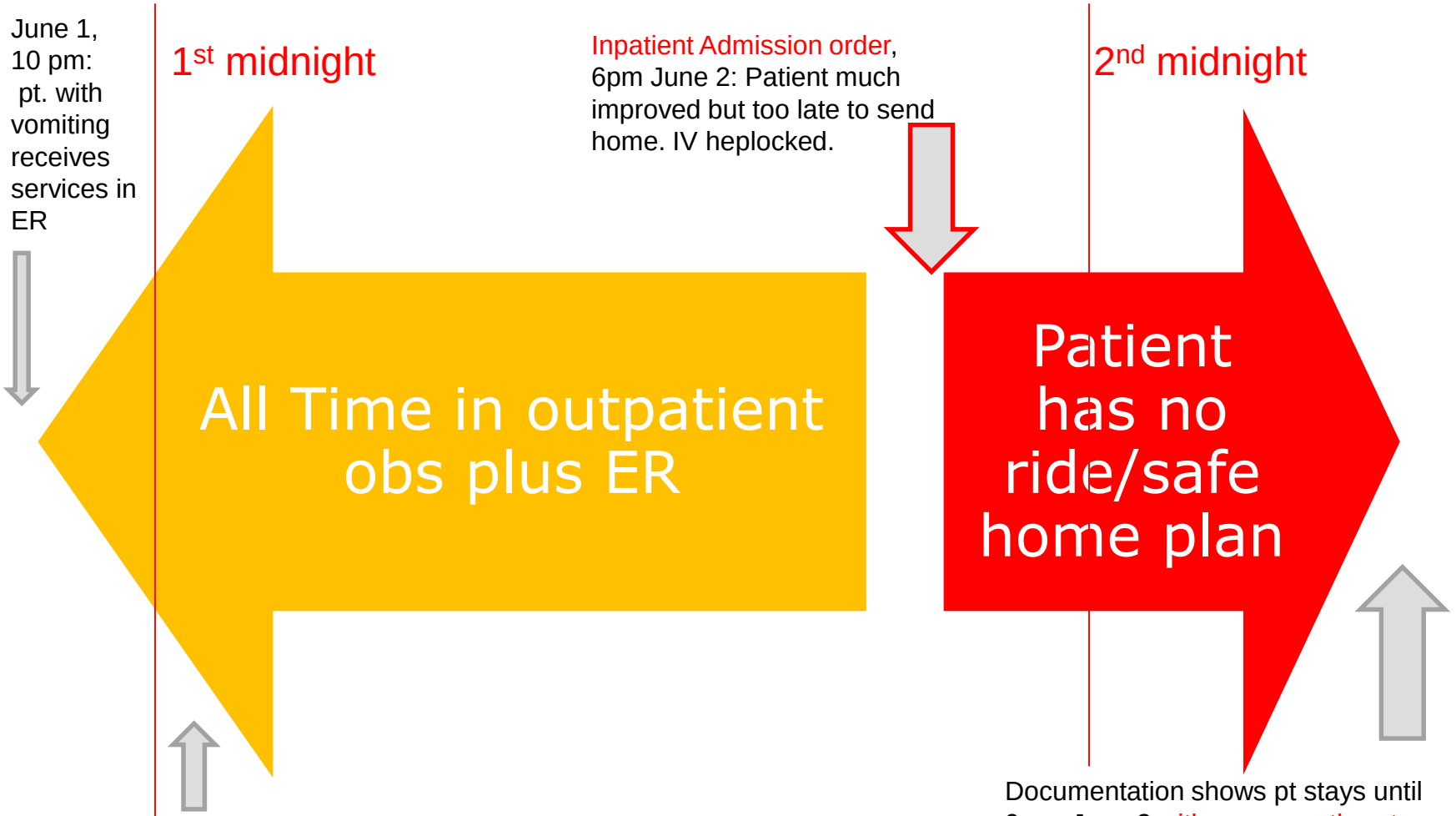
Example 3
Will Be Audited and Denied



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Further Examples from Audience