



## FEDERAL UPDATE: Court Rules CMS Payment Cut Improper

A recent court ruling by a federal judge found that the Centers for Medicare and Medicaid Services (CMS) 0.2 percent across-the-board payment cut to inpatient reimbursements, as a result of the “two-midnight” rule, is improper. The judge concluded that CMS’ failure to disclose its actuarial rationale for predicting a higher number of inpatient admissions, as a result of implementation of the “two-midnight” rule, was not properly disclosed and therefore did not provide the hospital industry with a meaningful opportunity to comment on the “two-midnight” rule in the first place.

The hospital industry also maintains that the “two-midnight” rule does not account for the fact that some high-need patients require intensive inpatient services, even though their inpatient admission may be brief. The “two-midnight” rule came about as a result of hospital industry complaints that CMS-hired Recovery Audit Contractors (RACs), often and without substantiating evidence, denied short stays. In response to hospitals’ and patients’ pleas for clarity on CMS’ expectations for a legitimate inpatient admission, the agency drew a line at stays that extend for a period crossing two midnights. Congress partially delayed enforcement of the “two-midnight” rule several times and extended a “probe and educate” transition period for hospitals – a span of time in which very limited audits were conducted to help the hospital industry acclimate itself to the new rule.

This federal court ruling is a win for the hospital industry, and the court is requiring CMS to re-promulgate and correct the proposed rule. CMS must disclose the methods it used to arrive at its conclusion that more inpatient admissions would occur, as a result of the “two-midnight” rule. It must also give meaningful consideration to public comments. Failure of CMS to comply with the court’s ruling could result in a future order vacating the final rule. The federal judge agreed, however, that CMS has the statutory authority to implement inpatient payment cuts, but in this case the agency failed to follow the procedural requirements of the Administrative Procedure Act. The Healthcare Association of New York State joined the American Hospital Association’s suit filed earlier this year that contested the “two-midnight” 0.2 percent inpatient payment cut.

## STATE UPDATE: Health Insurance Marketplace Opens Nov. 1

The New York State of Health marketplace opens for business on November 1, 2015. This is the third season of open enrollment.

New to the marketplace this year is an Essential Plan. This plan offers affordable insurance options to those whose incomes are above the Medicaid limit, but who still cannot afford the premiums of other marketplace plans. Depending on income, the monthly premium for the Essential Plan ranges from \$0 to \$20 per month. The Essential Plan covers all major medical needs and is only available through the New York State of Health marketplace.

Enrollment ends January 31, 2016. Enrollment in the small business marketplace is available year long. Individuals and small businesses can shop the marketplace through an online portal – [www.nystateofhealth.ny.gov](http://www.nystateofhealth.ny.gov), by calling the state’s customer service number at 855-355-5777, or by meeting with a state-certified navigator.

On Long Island, Suburban Hospital Alliance regional affiliate the Nassau-Suffolk Hospital Council (NSHC) is one of three state-appointed navigator agencies for the region. The Hudson Valley region is serviced by the Community Service Society of New York, Maternal Infant Services Network of Orange, Sullivan, and Ulster counties, and the Westchester County and Rockland County Departments of Health.

The NSHC navigator agency maintains a user-friendly, bilingual website that lists enrollment sites and dates and other helpful information at [www.coverage4healthcare.org](http://www.coverage4healthcare.org). *\*Permission to reprint articles granted. Attribution to this publication required.*