



Compliance TODAY

July 2015

A PUBLICATION OF THE HEALTH CARE COMPLIANCE ASSOCIATION

WWW.HCCA-INFO.ORG

Congratulations, Laura!

an interview with Laura Burke —
our 15,000th member

See page 18



27

When risk assessments become exhibits: Are you prepared?

Michael J. McCarthy and Andrew W. Mahler

33

RAC forecast: Are we in the eye of the storm or are sunny skies ahead?

Isabella R. Edmundson and Lauren S. Gennett

43

Compliance tips: Evaluate your effectiveness by asking 50 questions

Shelly L. Harris

47

The Two-Midnight Rule: Past, present, and future [UPDATE]

Janice Anderson and Sara Iams

by Janice Anderson and Sara Iams

The Two-Midnight Rule: Past, present, and future [UPDATE]

- » The Two-Midnight Rule is highly controversial and its future is questionable.
- » Since the adoption of the Two-Midnight Rule, CMS enacted a Probe & Educate program and delayed RAC enforcement of the Two-Midnight Rule, in large part due to push-back from the industry.
- » The deadline that would trigger RAC enforcement of the Two-Midnight Rule has been extended several times, most recently through September 30, 2015.
- » The Medicare Payment Advisory Commission (MedPAC) also is not favorable to the Two-Midnight Rule and recommended withdrawal of the Rule.
- » In the 2016 proposed Inpatient Prospective Payment System (IPPS) rule, CMS indicated that it would consider the MedPAC recommendations in its rule-making related to the 2016 proposed Outpatient Prospective Payment System rule to be released this summer.

Janice Anderson (janderson@polsinelli.com) is a Shareholder in the Chicago office and **Sara Iams** (siams@polsinelli.com) is an Associate in the Washington DC office of Polsinelli PC. [in](https://www.linkedin.com/company/polsinelli) /in/saraiams

This is an update to the article entitled “The Two-Midnight Rule: Past, present, and future,” published in the May 2015 edition of *Compliance Today*. Since the adoption of the Two-Midnight Rule, CMS has repeatedly extended the Probe & Educate program and delayed RAC enforcement of the Two-Midnight Rule, in large part due to push-back from the industry. At the time of the original article, CMS had recently moved the deadline to April 30, 2015, and Congress was in the midst of debate on whether to further extend it.

Two new developments have occurred since the article was published. First, on April 17, with the passage of the Medicare Access and CHIP Reauthorization Act of 2015, Congress once again authorized CMS to extend the Probe & Educate program through September 30, 2015 and barred RACs from conducting post-payment reviews for hospital discharges occurring through September 30, 2015, other

than in instances of suspected fraud. It’s not clear whether this will be the final delay or whether Congress or CMS will intervene once more as September approaches.

Second, although CMS declined to provide specific guidance, it announced in the 2016 Inpatient Prospective Payment System (IPPS) proposed rule that it would consider feedback from the Medicare Payment Advisory Commission (MedPAC) regarding the Two-Midnight Rule. In its June 2015 *Report to the Congress*, MedPAC made several recommendations, most notably that CMS should withdraw the Two-Midnight Rule altogether and should direct RACs to focus reviews on those hospitals that have the highest number of short inpatient stays. According to the 2016 IPPS proposed rule, CMS will address the MedPAC recommendations more thoroughly in the 2016 Outpatient Prospective Payment System (OPPS) proposed rule, due to be released this summer. ☐



Anderson



Iams