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CMS issues Advanced Notice of Proposed Rule Making Regarding EMTALA's Application to Hospital Inpatients

By Gilbert F. Ganucheau, Esq.*

CMS, in the December 23, 2010, Federal Register, issued an Advanced Notice of Proposed Rulemaking ("ANPRM") seeking comments regarding CMS's regulations implementing the Emergency Medical Treatment Active Labor Act (Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act). Specifically, CMS is seeking comments regarding its intent to adopt changes to the regulations found at 42 CFR 489.24 concerning the continuing applicability of EMTALA protections to individuals once they have been admitted to a hospital. CMS in the ANPRM discusses the history of EMTALA and its regulations and CMS's previous attempt to adopt regulations that would continue the obligations of both the admitting hospital and hospitals with specialized treatment capability to patients who have been admitted in order to stabilize the emergency medical condition ("EMC") of the individual.

CMS in its initial rules on EMTALA stated that a hospital's obligation under EMTALA ends upon either stabilization of the EMC or admission of the individual as an inpatient. (68 FR 53243). CMS later issued a proposed rule change that would have continued EMTALA obligations beyond admission as an inpatient. CMS included as part of the April 30, 2008 IPPS proposed rule (73 FR 23669) two proposals that addressed the issue of hospital inpatients. One proposal was that EMTALA requires a receiving hospital with specialized capabilities to accept a request to transfer an individual with an unstable EMC so long as the hospital has the capacity to treat that individual regardless of whether that individual was admitted as an inpatient at the admitting hospital.

CMS did not adopt the proposed rule changes due to comments received from the hospital industry. Instead, CMS, in the 2008 IPPS final rule, finalized its policy to state that if an individual with an unstable EMC is admitted as an inpatient, the EMTALA obligation has ended, even if the individual's EMC remains unstabilized and the individual requires treatment only available at a hospital with specialized capabilities. Therefore, CMS determined that a hospital with specialized capabilities does not have an EMTALA obligation to accept an appropriate transfer of an individual who had been admitted in good faith as an inpatient at the first hospital.

In the ANPRM, CMS is seeking comments on whether it should revisit the existing regulations as adopted in the 2003 final rule and the 2008 IPPS final rule. CMS is seeking specific examples of the transfer to another facility of inpatients whose EMC was not stabilized, even though the admitting hospital had the capacity and capability to stabilize the EMC. CMS also requests examples of the refusal of a hospital with specialized capabilities to accept a transfer of a patient that was admitted as an inpatient but whose EMC remained unstabilized. CMS will accept comments through February 22, 2011.

74 FR 80762–80765. <http://edocket.access.gpo.gov/2010/pdf/2010-32267.pdf>

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