

Implications for EMTALA

FY 2007 HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM FINAL RULE

On August 1, 2006, the Centers for Medicare & Medicaid Services (CMS) issued the hospital inpatient prospective payment system (IPPS) final rule for fiscal year (FY) 2007. In this rule, CMS estimates FY 2007 operating and capital payments for hospitals under the Medicare program will increase by \$3.4 billion, with payment rates increasing by 3.5 percent on average to all hospitals.

Of particular interest are the following changes relating to EMTALA:

Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group

Section 945 of the Medicare Modernization Act (MMA) directed the Secretary to convene a Technical Advisory Group (TAG) to review issues related to EMTALA and its implementation. In this rule, CMS is finalizing two revisions to current regulations recommended by the EMTALA TAG.

CMS is modifying the current requirement under which only a physician is authorized to determine that a pregnant woman having contractions is in false labor. As recommended by the TAG, CMS will allow hospitals the flexibility to use certified nurse-midwives or other qualified non-physicians acting within their scope of practice, as defined in hospital medical staff bylaws and State law.

EMTALA Requirements and Specialty Hospitals

Over the past year, CMS has considered how provisions of EMTALA should apply to specialty hospitals. CMS held a special Open Door Forum to solicit comments on this issue. Additionally, the EMTALA TAG was asked to consider: (1) whether there should be a Federal requirement that all hospitals must have an emergency department; (2) whether EMTALA should be interpreted as meaning that all hospitals (including specialty hospitals) with specialized capabilities or facilities must accept appropriate transfers; and (3) whether specialty hospitals are exacerbating problems with an “on-call” coverage for emergency departments.

After taking into account the EMTALA TAG’s deliberations and public comments from the EMTALA TAG meeting and the Open Door Forum, CMS does not currently intend to recommend to Congress that all hospitals must have an emergency department; or require, as a condition of Medicare participation, that all hospitals have an emergency department. Furthermore, CMS is not proposing, at this time, any statutory or regulatory changes regarding on-call requirements.

However, CMS is requiring that all Medicare-participating hospitals with specialized capabilities, including specialty hospitals, must accept appropriate transfers of unstable individuals, regardless of whether the hospital with specialized capabilities has an emergency department. CMS has, in the past, taken enforcement actions based on its policy that all participating hospitals with specialized capabilities have an EMTALA obligation to accept an appropriate transfer of an unstable individual protected by EMTALA.