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CMS Issues Final EMTALA Provisions for FY 2009 - Two Significant Changes from Proposed Rule

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On August 19, 2008, CMS issued the final FY 2009 Hospital Inpatient Prospective Payment System rules. We reported some of the changes proposed to the EMTALA regulations in our ***May 15, 2008 Payment Matters issue***. The final rule adopted most of the proposed changes in their entirety, but CMS did make two significant changes to the proposed EMTALA regulations:

- A. We reported in May that CMS was proposing to amend the EMTALA regulation to add a provision stating explicitly that a participating hospital with specialized capabilities could not refuse to accept the appropriate transfer of an individual who had been admitted as an inpatient at another hospital, but who remained in an unstable condition and needed specialized care available at the "accepting" hospital. In the final rule, CMS reversed this position. The final rule now states that if an individual with an unstable emergency medical condition presents to a participating hospital and is admitted, the admitting hospital has satisfied its EMTALA obligation towards that individual. Furthermore, if the patient is subsequently transferred to a hospital with capabilities for specialized care, that hospital does not have an EMTALA obligation to accept the individual. CMS requested that the public make the Agency aware if this policy results in unintended consequences, such as harmful refusals by hospitals with specialized capabilities to accept the transfer inpatients whose emergency medical condition remains unstabilized.
- B. In the May 15 *Payment Matters* article, we reported that CMS was proposing to relocate the requirement for hospitals to maintain an on-call list from the EMTALA regulations to the regulations governing provider agreements. This proposal was adopted in the final IPPS regulation. In addition, CMS proposed in May 2008 to allow hospitals to satisfy their on-call coverage obligations by participating in a formal community/regional call coverage program, and further proposed a number of requirements for an acceptable community call coverage

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program. CMS adopted this proposal and all the criteria, except one. The final IPPS rule does not include the requirement that the hospital engage in an analysis of the specialty on-call needs of the community.

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