

# Health Headlines

February 6, 2012

## **CMS Requests Comments Regarding Applicability of EMTALA to Hospitals with Specialized Capabilities**

The Centers for Medicare & Medicaid Services (CMS) recently published a Request for Comments regarding the applicability of the Emergency Medical Treatment and Labor Act (EMTALA) to hospital inpatients and hospitals with specialized capabilities. 77 Fed. Reg. 5213 (Feb. 2, 2012). In its 2003 final rule regarding EMTALA, CMS clarified that a hospital's EMTALA obligation ends when the hospital, in good faith, admits an individual with an unstable emergency medical condition (EMC) as an inpatient in the hospital, noting that the Medicare Conditions of Participation act as a safeguard for those admitted inpatients. 68 Fed. Reg. 53243 (Sept. 9, 2003). In the 2008 IPPS final rule, CMS also finalized its policy that a hospital with specialized capabilities does not have an EMTALA obligation to accept the appropriate transfer of a patient admitted in good faith as an inpatient at another hospital. 73 Fed. Reg. 48659 (Aug. 19, 2008). In 2010, CMS sought comments regarding its above positions. *See* Advance Notice of Proposed Rulemaking (ANPRM), 75 Fed. Reg. 80762 (Dec. 23, 2010). CMS noted that in response to its request for comments in the ANPRM, it received few comments against its policy that an admitting hospital's EMTALA obligation ends after the hospital, in good faith, admits as an inpatient an individual with an unstabilized EMC. Since 2003, many commenters have argued that extending EMTALA to inpatients likely would increase transfers of medically complex patients requiring extensive lengths of stay to tertiary care, teaching and safety net hospitals, thereby increasing the burdens of hospitals that already receive a disproportionate number of transfers. Most comments to the recent ANPRM also sought no change to current policies regarding EMTALA's applicability to a hospital with specialized capabilities. Although CMS has determined to leave the policy regarding hospitals with specialized capabilities as is, it will continue to monitor the issue and is seeking "data or real world examples that are relevant to this issue." Comments must be received no later than 5 p.m. EST on April 2, 2012.

Reporter, *Christina Gonzalez*, Houston, +1 713 276 7340, [cagonzalez@kslaw.com](mailto:cagonzalez@kslaw.com).

### **Health Headlines – Editor:**

**Dennis M. Barry**  
[dbarry@kslaw.com](mailto:dbarry@kslaw.com)  
+1 202 626 2959

The content of this publication and any attachments are not intended to be and should not be relied upon as legal advice.