HONIGMAN

Health Care Alert

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CMS Finalizes New EMTALA Rule Permitting Hospitals to Participate in "Community Call" Arrangements; Rejects Expanding the EMTALA Obligations of Hospitals with Specialized Capabilities

On Thursday, July 31, 2008, the Centers for Medicare and Medicaid Services ("CMS") released a display copy of the final 2009 inpatient prospective payment system rule (the "2009 IPPS"). The 2009 IPPS, which will be published in the *Federal Register* on August 19, 2008, makes two notable revisions to the regulations implementing the Emergency Medical Treatment and Active Labor Act ("EMTALA"): (1) it finalizes a new rule that provides hospitals the opportunity to manage their on-call obligations on a community-wide basis, and (2) it clarifies CMS' position regarding the obligations of a hospital with specialized capabilities to accept the transfer of a patient from another hospital without that capability.

Community Call Plans

In an effort to afford additional flexibility to hospitals providing on-call services and improve access to specialty physicians for individuals in an emergency department, CMS has revised an existing EMTALA regulation to permit hospitals to participate in formal community call arrangements whereby hospitals can divide their on-call responsibilities by time, place, and/or services. By way of example, two hospitals can participate in a plan whereby one could be designated as the on-call facility for cases requiring specialized interventional cardiac care, and the other could be designated as the on-call facility for neurological cases. The finalized regulations require formal community call plans to include the following elements:

- A clear delineation of on-call coverage responsibilities;
- A defined, specific geographic area to which the plan applies;
- Local and regional EMS system protocols that formally include information on community call arrangements;
- A statement specifying that (i) even if an individual arrives at a hospital that is not designated as the on-call hospital, that hospital still has an obligation under EMTALA to provide a medical screening examination and stabilizing treatment within its capability, and (ii) hospitals participating in community call must abide by the EMTALA regulations governing appropriate transfers;
- An annual reassessment of the community call plan by participating hospitals; and
- Signatures by the appropriate representatives of the participating hospitals.

Inpatient Transfers

Under existing EMTALA regulations, a participating hospital that has specialized capabilities or facilities (e.g., burn units, shock-trauma units or neonatal intensive care units) may not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities if the hospital has the capacity to treat the individual. Prior to the issuance of the 2009 IPPS, it was unclear whether or not that obligation required specialty hospitals to receive transfers of individuals who had presented and been *admitted* to a hospital without specialized capabilities. In the proposed 2009 IPPS, issued on April 30, 2008, CMS indicated that it believed that the EMTALA obligation did not end for all other hospitals once an individual had been admitted as an inpatient to the hospital where the individual first presented. Accordingly, CMS proposed to amend the current regulations to clarify that when an individual covered by EMTALA is admitted as an inpatient and remains unstabilized with an emergency medical condition, a

receiving hospital with specialized capabilities has an obligation to accept a transfer of that individual, assuming that the transfer is appropriate and the specialty hospital with specialized capabilities has the capacity to treat the individual.

In the 2009 IPPS, CMS rejected its proposal stating:

> *After consideration . . . , we believe that finalizing the policy as proposed may negatively impact patient care, due to an increase in inappropriate transfers which could be detrimental to the physical and psychological health and well-being of patients. We are concerned that finalizing our proposed rule could further burden the emergency services system and may force hospitals providing emergency care to limit their services or close, reducing access to emergency care.*

In lieu of making its proposed change, CMS revised existing regulations to clarify that hospitals with specialized capabilities *do not* have an EMTALA obligation to receive transfers of individuals who had presented and been *admitted* to a hospital without specialized capabilities. That being said, CMS reaffirmed that if an individual presents to a hospital with a dedicated emergency department and is found to have an emergency medical condition that requires specialized stabilizing treatment not available at the hospital where the individual presented, *and such individual has not been admitted as an inpatient*, then another Medicare participating hospital with the requisite specialized capabilities is obligated to accept the appropriate transfer of this individual so long as it has the capacity to treat the individual.

Further Information

The revised regulations will become effective on October 1, 2008. For further information regarding the changes to the EMTALA regulations or assistance with structuring a community call plan, please contact any member of the Honigman Health Care Department listed below.

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