

## CMS NOT TO MAKE CHANGES TO CURRENT EMTALA REGULATIONS OR POLICIES

On Thursday, February 2, 2012, the Centers for Medicare and Medicaid Services ("CMS") issued in the Federal Register its decision not to propose changes to the current Emergency Medical Treatment and Labor Act ("EMTALA") regulations. However, in this notice CMS is seeking additional comments on the applicability of hospitals with specialized capabilities to accept transfers of a patient admitted as an inpatient from a hospital that lacks the capability or capacity to treat the inpatient.

This notice is CMS's response to the December 23, 2010 advanced notice of proposed rulemaking to solicit public comments on the need to revisit CMS's policy on the applicability of the EMTALA to individuals who are determined in the hospital's dedicated emergency department to have an emergency medical condition ("EMC") who, prior to being stabilized, are subsequently admitted to the hospital as inpatients and then need to be transferred to another hospital with specialized capabilities for stabilizing treatment. In that proposed rule, CMS intended to create an obligation on hospitals with specialized capabilities to accept appropriate transfers of individuals for whom the admitting hospital originally had an EMTALA obligation so long as the specialized hospital had the capability and capacity to treat the individual.

In 2003, CMS issued a final rule, and the current regulations state that if an individual comes to the hospital's dedicated emergency department, is determined to have an EMC, is admitted as an inpatient and continues to have an unstabilized EMC, which requires the specialized capabilities of another hospital, the EMTALA obligation for the admitting hospital has ended. Further, a hospital with specialized capabilities also does not have an EMTALA obligation towards that individual from the admitting hospital. Subsequent to the issuance of that rule, there continues to be court decisions that have conflicting decisions on the applicability of EMTALA to hospital inpatients.

CMS stated that it is going to continue to monitor whether it may be appropriate in the future to reconsider the applicability of EMTALA to specialized hospitals. While CMS maintains that a hospital has satisfied its EMTALA obligation once the hospital, in good faith, admits that individual as an inpatient; and most comments to the December 10, 2010 proposed rule supported making no changes to the current policies regarding the applicability of EMTALA to specialized hospitals, CMS is providing an additional 60 days for the public to comment on the applicability of EMTALA to specialized hospitals.

Click [here](#) to review the February 2, 2012 notice. Comments may be submitted to <http://www.regulations.gov> by 5 P.M. EST on April 2, 2012.

If you have any questions about this notice or submitting comments to CMS, please contact Clifford A. Beyler at 317.977.1441 or [cbeyler@hallrender.com](mailto:cbeyler@hallrender.com) or your regular Hall Render attorney.