



Arizona Hospital and Healthcare Association

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Donald M. Berwick, M.D., M.P.H.
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: File Code: CMS-1350-ANPRM, Medicare Program; Emergency Medical Treatment and Labor Act: Applicability to Hospital and Critical Access Hospital Inpatients and Hospitals With Specialized Capabilities

Dear Dr. Berwick:

The Arizona Hospital and Health Care Association (AzHHA) appreciates the opportunity to respond to the Centers for Medicare and Medicaid Services' (CMS) question as to whether it should reconsider its current Emergency Medical Treatment and Labor Act (EMTALA) interpretation that hospitals with specialized capabilities are not required to accept inpatient transfers.

Community hospitals are the medical safety net for this country. AzHHA's member hospitals support the intent of EMTALA – to assure that people who need emergency services receive them. Our answer to the question posed by CMS in the advance notice of proposed rulemaking (ANPRM) – whether it should revisit its current policies on the application of EMTALA to inpatients – is “no.” The current policies are the appropriate interpretation of the law and are achieving what Congress intended. They do not need to be revisited.

First, AzHHA asked its members whether it would be beneficial for CMS to revisit the above rule and whether there have been instances in which patients were inappropriately transferred or whether there have been concerns with hospitals with specialized capabilities not accepting emergent inpatient transfers. The AzHHA members that responded stated that they continue to believe that EMTALA should not apply to inpatient transfers. The "real life" example provided demonstrates that there continues to be a concern with abusive transfers. One member that has specialized capabilities stated that "not infrequently," the hospital receives calls from other hospitals requesting to

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transfer patients to them when the hospital has the capability to provide this care. This member stated that these transfers typically involve physicians who do not want to continue to provide care to patients for a variety of reasons, including liability reasons.

AzHHA did not receive any comments from members who stated that they were concerned about not being able to transfer hospital inpatients in true emergency situations when the hospital clearly lacked the ability to provide this care.

Second, AzHHA members continue to be concerned with any expansion of EMTALA.

As we stated in our comments to the proposed EMTALA regulations in [2008], absent evidence that hospital patients who present to a hospital's emergency department require continued protection in the event that the hospital is unable to stabilize the patient's emergency medical condition, no further expansion is necessary. Medicare Conditions of Participation require hospitals to provide appropriate treatment to inpatients with emergency medical conditions and our hospitals routinely enter into transfer agreements or other arrangements with other hospitals to address any transfer concerns. Accordingly, the necessary patient protections are already in place. There is no need to apply the "duty to accept" requirement to hospital inpatient transfers.

Finally, we are concerned about the implications that the expansion will have on patient care and the increased health care costs that will likely result, including increased costs to the Medicare program. As we have heard from our members, it is likely that an expanded obligation to accept patient transfers will increase the number of patient transfers, including unnecessary patient transfers. These transfers have the potential to adversely affect the patients' health. Further, these transfers will result in additional inpatient hospital and ambulance transportation costs, which ultimately increases the costs to both the patient and his or her health care insurer, including federal health care programs.

Thank you for the opportunity to respond to CMS' request for feedback regarding this issue. Given the serious concerns that AzHHA and its members have with any expansion of the EMTALA "duty to accept" rule to hospital inpatients, we respectfully request that CMS not change its current policy interpretation.

If you have any questions or would like to discuss AzHHA's comments further, do not hesitate to contact me at (602) 445-4303 .

Sincerely,



Tanie Sherman, RN, MBA
Director, Regulatory Advocacy