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February 22, 2011

Donald M. Berwick, MD
Administrator, Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attention: CMS -1350-ANPRM
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Submitted electronically to <http://www.regulations.gov>

Re: **Medicare Program; Emergency Medical Treatment and Labor Act: Applicability to Hospital and Critical Access Hospital Inpatients and Hospitals With Specialized Capabilities.** CMS-1350-ANPRM; RIN 0938-AQ51. 75 Fed. Reg. 80762 (Dec. 23, 2010)

Dear Dr. Berwick,

The American Nurses Association (ANA) welcomes the opportunity to respond to this advance notice of proposed rulemaking. The ANA is the only full-service professional organization representing the interests of the nation's 3.1 million registered nurses, the single largest group of health care professionals in the United States. We represent RNs in all roles and practice settings, through our state and constituent member nurses associations, and organizational affiliates. ANA advances the nursing profession by fostering high standards of nursing practice, promoting the rights of nurses in the workplace, projecting a positive and realistic view of nursing, and advocating before Congress and regulatory agencies on health care issues affecting nurses and the public. Our members include Advanced Practice Registered Nurses (APRNs) such as Nurse Practitioners (NPs), Clinical Nurse Specialists (CNSs), Certified Nurse Midwives (CNMs), and Certified Registered Nurse Anesthetists (CRNAs).

Questions Regarding EMTALA

Although the ***Emergency Medical Treatment and Labor Act*** (EMTALA) has focused on the treatment of individuals who present to a hospital's dedicated emergency department, questions have arisen about the applicability of EMTALA to hospital inpatients. CMS has addressed this through a number of rulemaking cycles. The

Inpatient Prospective Payment System (IPPS) final rule of August 19, 2008 stated that “if an individual with an unstable emergency medical condition (EMC) is admitted as an inpatient, the EMTALA obligation has ended, even if the individual’s EMC remains unstabilized and the individual requires treatment only available at a hospital with specialized capabilities.” CMS is now requesting comments regarding the need to revisit policies concerning the applicability of EMTALA to inpatients who need to be transferred to another hospital with specialized capabilities.

EMTALA Should Apply to Inpatients

The ANA supports clarifying this question with a provision stating that when an individual covered by EMTALA is admitted as an inpatient and remains unstabilized with an EMC, a receiving hospital with specialized capabilities and the capacity to treat the individual has an EMTALA obligation to accept that individual.

“Real World Examples”

We appreciate that CMS has sought “real world examples” that demonstrate the impact of EMTALA policies. Nurses, on the front lines of health care in rural settings and particularly in critical access hospitals, are well aware of the impact of EMTALA provisions.

A nurse-midwife in “a very small rural hospital with 20 beds” related the following case to illustrate her experience:

Usually our regional referral center is excellent. We mainly transfer babies; maternal transfers are pretty rare.

We recently had a patient who I referred to the tertiary center due to her excessive weight. She was over 400 lbs (above our scale's capability to weigh and more than our hospital OR tables and toilets were rated for) with BMI over 60. When she went to the local hospital with SRM [spontaneous rupture of membranes] and they tried to transfer her to the referral center they were told that her condition "didn't warrant a perinatal transfer."

The tertiary center is a one hour drive away. The patient ultimately left the hospital and had a relative drive her to the Level II hospital where she was admitted and delivered by Caesarean section. Surgery on this high risk patient would have been dangerous to try to do at our small facility.

This nurse-midwife describes a feeling we commonly hear from providers in similar settings: “I feel that the staff at the big medical center have no idea of what it is like in small facilities like ours where there are no specialists, no back-up anesthesiologists, limited ICU staff, with limited experience with serious complications.”

A clarification of EMTALA’s application to these situations would respond to the needs expressed by these providers and help ensure the safety of patients in need of transfer.

We appreciate the opportunity to comment on this important rule. If we can be of further assistance, or if you have any questions or comments, please feel free to contact Lisa Summers, CNM, DrPH, at Lisa.Summers@ana.or or 301-628-5058.

Sincerely,

A handwritten signature in black ink that reads "Marla J. Weston". The signature is written in a cursive, flowing style.

Marla J. Weston, PhD, RN
Chief Executive Officer
American Nurses Association

Cc: Karen A. Daley, PhD, MPH, RN, FAAN
President
American Nurses Association