



American Association of Neurological Surgeons  
Congress of Neurological Surgeons

## Grassroots Action Alert

### CMS PRONOUNCES THAT SIMULTANEOUS EMERGENCY CALL COVERAGE VIOLATES EMTALA - POTENTIAL FINES UP TO \$50,000

#### CONTACT CMS TODAY TO URGE REVERSAL OF THIS POLICY

**Background:** EMTALA, or the Emergency Medical Treatment and Labor Act, was enacted in 1986 and was designed principally to prevent hospitals from "dumping" patients with emergency medical conditions based on their inability to pay for the emergency medical care. The law requires, among other things, that hospitals maintain a list of on-call physicians available to the emergency department. On-call physicians who fail to respond when called by the emergency department are subject to potential fines of \$50,000 and/or exclusion from the Medicare program. Since the enactment of EMTALA, the Centers for Medicare and Medicaid Services (CMS -- formerly HCFA) has issued a number of regulations and guidelines implementing the specific requirements of EMTALA. Unfortunately, despite ongoing pressure from the AANS, CNS and others, CMS has failed to provide adequate guidance on a number of issues related to the on-call requirements, leaving neurosurgeons at significant risk of violating EMTALA.

**CMS Offers Clarification at AANS Annual Meeting:** In an effort to further educate neurosurgeons and seek additional clarification from CMS, a special EMTALA symposium was held at this year's AANS Annual meeting in Chicago. Trent Haywood, MD, JD, Chief Medical Officer of the CMS Region V office, participated on the panel and made the following statements:

- EMTALA does ***not*** require neurosurgeons to be on-call 24 hours per day, 7 days per week, 365 days per year. It is the *hospital's* responsibility to provide on-call emergency coverage. However, hospitals themselves may require 24-7-365 coverage as a condition of medical privileges, through the medical staff bylaws or other hospital rules and policies. CMS does not currently prohibit this practice.
- EMTALA ***prohibits*** simultaneous call. If a neurosurgeon who is covering multiple hospitals fails to respond when called because he or she is treating an emergency at another hospital, this constitutes an EMTALA violation unless back-up coverage is arranged in advance.
- EMTALA ***permits*** neurosurgeons to schedule elective surgery while on-call. ***However***, if the on-call surgeon is in elective surgery and cannot respond to an emergency if called, he or she would violate EMTALA unless back-up coverage was available.

Dr. Haywood also informed the attendees that CMS is currently reviewing its on-call rules, including the simultaneous call policy, and urged neurosurgeons not to panic and change their current on-call practices. He further pledged that written information on these issues would be forthcoming (although to date, nothing has yet been issued). Following the symposium, the AANS and CNS sent a detailed letter to HHS Secretary, Tommy Thompson, outlining our serious concerns about these issues and requesting immediate resolution of our problems.

**CMS Issues Proposed Revisions to EMTALA Rules:** On May 9, 2002, CMS issued a proposed regulation that would make several positive changes to current EMTALA rules. However, the regulation only addressed the 24-7-365 aspect of the on-call issue. In the *Federal Register* notice, CMS clarifies

that (1) EMTALA does not require physicians to be on-call at all times, (2) it is the hospital's responsibility to maintain the on-call list and (3) there is no predetermined ratio to identify how many days that a hospital must provide on-call coverage based on the number of physicians on staff for a particular specialty (i.e., there is no "rule of three").

**Action Requested:** The AANS and CNS believe that the proposed rule fails to adequately address critical on-call issues and we have therefore submitted detailed comments urging CMS to make extensive changes. In order to bolster our arguments **all neurosurgeons should IMMEDIATELY submit a written comment letter to CMS in response to the proposed EMTALA regulation.** In your comments you should stress the following points, supplemented by your own personal experience:

- There are more hospitals than there are neurosurgeons in the United States, making it impossible for neurosurgeons to provide continuous on-call coverage for every hospital emergency department in the United States.
- Many hospitals require neurosurgeons to be on-call 24-7-365 and neurosurgeons are not always able to modify the hospital medical staff bylaws or other hospital rules to change this requirement. **CMS should adopt a policy that prohibits hospitals from forcing neurosurgeons to provide continuous emergency call coverage.**
- Given the shortage of neurosurgeons available to provide emergency coverage, it is necessary for neurosurgeons to be on-call to more than one hospital at the same time so as to ensure that patients have the broadest access to emergency neurosurgical services. If neurosurgeons are not permitted to take call at more than one hospital at a time, access to emergency neurosurgical services will be severely restricted and patients will have to travel greater distances to find available neurosurgical care. **CMS should adopt a policy that explicitly permits simultaneous on-call coverage.**

**Requirements for Comment Letters:** Comments will only be considered if they are received **no later than 5:00 pm on July 8, 2002.** Mail written comments (**an original and three copies**) to:

Thomas A. Scully, Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1203-P  
PO Box 8010  
Baltimore, MD 21244-1850

**Please also fax a copy of your letter to the AANS/CNS Washington Office at 202-628-5264. It is very important that we have this information to help with our direct lobbying efforts on this issue.**

**For More Information:** To assist you in assisting us, a variety of information related to this issue, including a sample comment letter and the full text of the AANS/ CNS comment letter, is available at: <http://www.neurosurgery.org/socioeconomic/emtala.html>. If you have any questions related to this or other health policy issues, please contact Katie O. Orrico, Director, AANS/CNS Washington Office at 202-628-2072 or via e-mail at [korrico@neurosurgery.org](mailto:korrico@neurosurgery.org).

**PLEASE WRITE YOUR LETTER TODAY. YOU CAN BE SURE THAT THE HOSPITALS WILL BE WEIGHING IN ON THIS ISSUE AND WE NEED TO BALANCE THE VOLUME OF THEIR RESPONSES WITH OUR OWN!**

**Thank you for your assistance!**