

## SAMPLE EMTALA COMMENT LETTER

**NOTE: THIS IS A SAMPLE LETTER ONLY. YOU ARE ENCOURAGED TO BUILD ON IT, BUT PLEASE MAKE IT AS PERSONAL TO YOUR SITUATION AS POSSIBLE SO IT HAS THE MOST IMPACT ON THE REGULATORS. THE IMPACT OF FORM LETTERS ROUTINELY GET DISCOUNTED**

- **Comments must be received no later than 5:00 pm, July 8, 2002**
- **Send an original and 3 copies**
- **Fax a copy of your letter to the AANS/CNS Washington Office at 202-628-5264**

June 3, 2002

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

Dear Mr. Scully,

I am writing to express my concerns about the current EMTALA requirements for on-call physicians and urge you to make some important changes to these that will help both practicing neurosurgeons and the patients that I serve.

**[GIVE A BRIEF DESCRIPTION OF WHERE YOU PRACTICE, HOW MANY NEUROSURGEONS ARE IN YOUR GROUP, AND HOW MANY HOSPITALS YOU HAVE RELATIONSHIPS WITH (BOTH ELECTIVE AND ER COVERAGE)]**

I am very glad that CMS has clarified that EMTALA does not require specialists to be on-call to the emergency department at all times. However, this doesn't completely solve neurosurgeons' problems because even if EMTALA doesn't require physicians to be on-call all the time, many hospitals do. Because our voice is so small, we are often powerless to change these hospital rules, and as you may know, there simply aren't enough neurosurgeons in this country to provide continuous ER coverage. CMS therefore needs to do something to prohibit hospitals from forcing us to take ER call 24-7-365.

I have also just learned that CMS recently made it clear that EMTALA actually prohibits neurosurgeons from being on-call at multiple hospitals at the same time. Again, there are simply not enough neurosurgeons to cover all the hospital emergency departments and I, like my fellow neurosurgical colleagues around the country, have little choice but to take call at more than one hospital at a time. If CMS does not change this rule, I may be forced to restrict my practice to only one hospital and this will mean that both my elective and emergency patients will have to travel greater distances to be seen. This will reduce the community's access to neurosurgical services and surely the government does not want this to happen. I strongly recommend that CMS permit neurosurgeons to take simultaneous call.

Finally, it is also my understanding that while EMTALA does not prohibit me from scheduling and performing elective surgery while I'm on call, if I am called to the ER and cannot go because I am in surgery, this would be an EMTALA violation if no back-up is available. CMS must change the rules and allow neurosurgeons to do elective surgery while they are on-call without fear of EMTALA prosecution. If I am forced to limit my elective practice to ensure that I am available to the ER when I

am on-call, my patients will suffer because they will have to wait until I am clear to perform their surgery. In addition, this will have a serious detrimental effect on my ability to maintain my practice. My Medicare and other reimbursements have been cut, while at the same time my liability insurance and other practice expenses have dramatically increased. I simply cannot afford to eliminate elective surgery for weeks at a time when I am on-call to the ER.

Mr. Scully, neurosurgeons and our patients need your help to bring some sensibility to a regulation that seems to be totally disconnected to the real way in which medicine is practiced. I want nothing more than to serve my patients and my community well, but I fear that unless changes are made to the EMTALA rules, the EMS system, which is already in a state of crisis, will be in further jeopardy.

Thank you very much for considering my comments and I look forward to a quick resolution of these problems.

Sincerely,

Dr. Neurosurgeon