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April 2, 2012

Marilyn Tavenner

Acting Administrator, Centers for Medicare & Medicaid Services
Department of Health and Human Services, Attention: CMS-1350-NC
P.O. Box 8013
Baltimore, MD 21244-8013

Re: CMS-1350-NC

Dear Ms. Tavenner:

The American Academy of Pediatrics (AAP), a non-profit professional organization of 62,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults, appreciates the opportunity to comment on the proposed rule regarding the Emergency Medical Treatment and Labor Act (EMTALA), as published in the Federal Register on February 2, 2012.

Since its inclusion in the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), EMTALA has sparked debate regarding its applicability to in-patients. After a decade of considering the issue, the Centers for Medicare and Medicaid Services' (CMS) current position is that EMTALA requirements cease once a patient is admitted as an in-patient. CMS has solicited comment on the applicability of EMTALA to patients admitted to the hospital, including those needing transfer to specialty hospitals. The AAP supports the current interpretation of EMTALA that states the obligation ends once a patient is admitted.

The issue of patient transfer is a common one in pediatrics as children admitted to a community hospital often need specialized care at a children's hospital. In such instances, the receiving hospital may be wary of "dumping:" being forced to care for uninsured patients with no guarantee of payment. However, the AAP does not believe that expanding EMTALA is the solution to this issue. Rather, we recommend that community hospitals have transfer agreements with specialty hospitals. The creation of such pre-agreements and working relationships likely would better govern the need to transfer patients and might also promote better communication and safer transfers as well as better care. In 2009, the AAP, in conjunction with the American College of Emergency Physicians and the Emergency Nurses Association, issued a [Joint Policy Statement—Guidelines for Care of Children in the Emergency Department](#).

The AAP seeks clarification regarding the obligation of the hospital for a patient admitted to "observation status," as introduced in the Inpatient Prospective Payment System (IPPS) Final Rule Revisions to EMTALA Regulations, released March 6, 2009. In some instances when a patient is admitted to "observation status," EMTALA appears to apply, particularly if the patient is admitted to an observation unit physically adjacent to an Emergency Department. Irrespective of the observation unit location, the AAP encourages CMS to consider a hospital's EMTALA responsibilities fulfilled once a patient is admitted to "observation status."

As you know, there exists a range of legal opinions at the Federal Circuit level on EMTALA's application. Currently, application of the law differs depending on the Circuit in which the hospital is located, and in many Circuits it remains unclear which rule applies. To facilitate hospital and

physician compliance and avoid unnecessary liability, the AAP encourages that EMTALA:

- (1) Be applied and enforced uniformly across the country, regardless of geographic location of the patient or institution.
- (2) Be applied and enforced uniformly to all covered institutions, regardless of their status as the admitting/transferring hospital or as the specialized/receiving hospital, in any particular case.

In closing, we support CMS's decision to maintain the current interpretation of EMTALA regarding in-patients. The American Academy of Pediatrics deeply appreciates your ongoing commitment to meeting the needs of children and families. If we may be of further assistance, please contact Betsy Dunford in AAP's Washington, DC office at 202-347-8600.

Sincerely,

/s/

Robert W. Block, MD, FAAP
President

RWD/bd