

## II. Input Sought

There are several issues in the draft plan where options are being considered by the Department of Health and Human Services and final decisions are pending. Public comment on all aspects of the plan is being sought.

Dated: August 17, 2004.

**Arthur J. Lawrence,**

*Acting Principal Deputy Assistant Secretary for Health, Office of Public Health and Science.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1269-N2]

#### Medicare Program; Second Request for Nominations for Two Specific Categories of Members of the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG)

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice solicits nominations for members in two categories, patient representatives and State survey agency representatives, for which no nominations were received in response to our May 28, 2004 **Federal Register** notice. It also describes the establishment of the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG).

**DATES:** Nominations for membership will be considered if they are received by September 27, 2004.

**ADDRESSES:** Send nominations via mail or courier delivery to—Division of Acute Care, Mail stop C4-08-06, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Attention: Beverly J. Parker, or Via email to [EMTALATAG@cms.hhs.gov](mailto:EMTALATAG@cms.hhs.gov). To allow for verification, all emailed items, including letters of nomination and letters of support, must include the submitter's contact information.

Send written requests for copies of the EMTALA TAG Charter to—Division of Acute Care, Mail stop C4-08-06, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Attention: Marianne M. Myers

**FOR FURTHER INFORMATION CONTACT:** Beverly J. Parker (410) 786-5320.

Press inquiries are handled through the CMS Press Office at (202) 690-6145.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request examination or treatment for medical conditions, and apply to all of these individuals, regardless of whether or not they are beneficiaries of any program under the Act. These provisions, taken together, are frequently referred to as the Emergency Medical Treatment and Labor Act (EMTALA), also known as the patient antidumping statute.

EMTALA was passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Congress enacted these antidumping provisions in the Social Security Act because of its concern with an "increasing number of reports" that hospital emergency rooms were refusing to accept or treat individuals with emergency conditions if the individuals did not have insurance.

Regulations implementing the EMTALA legislation are set forth in 42 CFR 489.20(l), (m), (q) and (r)(1), (r)(2), (r)(3), and 489.24. These regulations incorporate changes made by a final rule published in the September 9, 2003 **Federal Register** (68 FR 53222). We published that final rule to clarify policies relating to the responsibilities of Medicare-participating hospitals in treating individuals with emergency medical conditions who present to a hospital under the provisions of EMTALA.

Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173), requires that the Secretary establish a Technical Advisory Group (TAG) for advice concerning issues related to EMTALA regulations and implementation. In the May 28, 2004 **Federal Register** (69 FR 30654), we specified the statutory requirements regarding the charter, general responsibilities, and composition of the EMTALA TAG. That notice also solicited nominations for members based on the statutory requirements for the EMTALA TAG.

## II. Charter, General Responsibilities, and Composition of the EMTALA TAG

### A. Charter Information and General Responsibilities

As explained in the May 28, 2004 notice, the Secretary signed the charter establishing the EMTALA TAG on May 11, 2004. This charter will terminate 30 months from the date of the EMTALA TAG's first meeting. The EMTALA TAG, as chartered, under the legal authority of section 945 of the MMA, is also governed by the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2. In accordance with section 945 of the MMA, the EMTALA TAG will meet at least twice a year and all meetings will be open to the public.

You may obtain a copy of the Secretary's charter for the EMTALA TAG by mailing a written request to the address specified in the **ADDRESSES** section of this notice.

Section 945 of the MMA specifies that the EMTALA TAG—

- Shall review the EMTALA regulations;
- May provide advice and recommendations to the Secretary concerning these regulations and their application to hospitals and physicians;
- Shall solicit comments and recommendations from hospitals, physicians, and the public regarding implementation of such regulations; and
- May disseminate information concerning the application of these regulations to hospitals, physicians, and the public.

### B. Composition of the EMTALA TAG

The May 28, 2004 notice stated that section 945 of the MMA specifies the composition of the EMTALA TAG. It states that the EMTALA TAG will be composed of 19 members including the Administrator of the Centers for Medicare & Medicaid Services (CMS) and the Inspector General of the Department of Health and Human Services (DHHS) in addition to the number and type of individuals specified in each of the following categories:

- Four representatives of hospitals, including at least one public hospital, that have experience with the application of EMTALA and, at least, two hospitals that have not been cited for EMTALA violations;
- Seven practicing physicians drawn from the fields of emergency medicine, cardiology or cardiothoracic surgery, orthopedic surgery, neurosurgery, pediatrics or a pediatric subspecialty, obstetrics-gynecology and psychiatry,

with not more than one physician from any particular field;

- Two representatives of patients;
- Two staff persons involved in EMTALA investigations from different CMS regional offices;
- One representative from a State survey agency involved in EMTALA investigations and one representative from a Quality Improvement Organization (QIO), both of whom shall be from areas other than the regions represented by the CMS regional offices.

### III. Response to May 28, 2004 Notice and Second Request for Nominations for Patient Representatives and State Survey Agency Representative

In response to our May 28, 2004 notice, we received nominations of individuals for the categories of hospital representatives, practicing physician representatives, staff persons involved in EMTALA investigations from CMS Regional Offices, and a QIO representative. Therefore, we are not seeking, and will not consider, any further nominations in any of these categories.

However, we did not receive any timely and complete nominations of individuals for two categories—(1) Patient representatives and (2) representative of a State survey agency involved in EMTALA investigations. Therefore, we are requesting nominations for membership on the EMTALA TAG in these categories. With respect to the category of patient representatives, the Secretary will consider qualified individuals who are nominated by organizations representing providers and patients. With respect to the category of State survey agency staff involved in EMTALA investigations, any interested person may nominate one or more qualified individuals (self-nominations will also be accepted). The Secretary will appoint members to serve on the EMTALA TAG from among those candidates determined to have the technical expertise required to meet specific agency needs and in a manner to ensure an appropriate balance of membership.

Each nomination must include the following:

1. A letter of nomination that contains—
  - a. Contact information for both the nominator and nominee (if not the same); and
  - b. The category, for which the nomination is being made (that is, either patient representative or representative of a State survey agency involved in EMTALA investigations).

2. A statement from the nominee that he or she is willing to serve on the EMTALA TAG for its duration (that is, at least 30 months from date of the first meeting) and an explanation of interest in serving on the EMTALA TAG. (For self-nominations, this information may be included in the nomination letter.)

3. A curriculum vitae that indicates the nominee's educational and EMTALA-related experiences.

4. Three letters of reference that support the nominee's qualifications for participation on the EMTALA TAG. (For nominations other than self-nominations, a nomination letter that includes information supporting the nominee's qualifications may be counted as one of the letters of reference.)

5. Additional information is required for representatives from a State survey agency—in your statement regarding serving on the EMTALA TAG indicate the extent of your experience with EMTALA investigations.

To ensure that a nomination is considered, we must receive all of the nomination information specified in section III of this notice by September 27, 2004.

**Authority:** Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). (Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 24, 2004.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-2201-N]

RIN 0938-ZA17

### State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2005

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** Title XXI of the Social Security Act (the Act) authorizes payment of Federal matching funds to

States, the District of Columbia, and U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under the State Children's Health Insurance Program (SCHIP). This notice sets forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year 2005.

States may implement SCHIP through a separate State program under title XXI of the Act, an expansion of a State Medicaid program under title XIX of the Act, or a combination of both.

**DATES:** This notice is effective on September 27, 2004. Final allotments are available for expenditures after October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Richard Strauss, (410) 786-2019.

#### SUPPLEMENTARY INFORMATION:

##### I. Purpose of This Notice

This notice sets forth the allotments available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2005 under title XXI of the Social Security Act (the Act). Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for 3 fiscal years, including the year for which the final allotment was provided. The FY 2005 allotments will be available to States for FY 2005, and unexpended amounts may be carried over to 2006 and 2007. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan.

Section 2104(b) of the Act requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. All States, the District of Columbia, and U.S. Territories and Commonwealths have approved plans for FY 2005. Therefore, the FY 2005 allotments contained in this notice pertain to all States, the District of Columbia, and U.S. Territories and Commonwealths.

##### II. Methodology for Determining Final Allotments for States, the District of Columbia, and U.S. Territories and Commonwealths

This notice specifies, in the Table under section III, the final FY 2005