

Public Citizen

NEWS RELEASE

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FOR IMMEDIATE RELEASE:
Monday, June 20, 1994

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HHS PUBLISHES "PATIENT DUMPING" REGULATIONS AFTER LONG DELAY; NEW REPORTING RULE IMPORTANT FOR EFFECTIVE ENFORCEMENT OF LAW

Public Citizen has obtained a copy of final "patient dumping" regulations, expected to be published -- after an inexcusable six-year delay -- by the Department of Health and Human Services (HHS) on June 22, 1994. With these rules, the reporting of "patient dumping" incidents should increase dramatically, leading to improved access to emergency care.

The regulations, to be published in Wednesday's Federal Register, help implement the Emergency Medical Treatment and Labor Act, which was passed by Congress in 1986. The law prohibits the practice known as "patient dumping" -- hospitals denying treatment to emergency patients or women in labor, often by transferring them to another hospital in unstabilized condition. Patients are usually "dumped" because they are poor or uninsured, but it may occur for other non-medical reasons as well. The law applies to all hospitals that offer emergency services and participate in Medicare, though it protects all patients seen by those hospitals, not just Medicare beneficiaries.

While the 1986 law took effect without regulations, the lack of guidance that agency rules and reporting requirements would provide has been a major obstacle to

effective enforcement of the law. From 1986 through 1992,¹ HHS identified only 302 "patient dumping" violations in 268 hospitals, despite a 1987 estimate that 250,000 patients a year were being denied emergency treatment for economic reasons. Of the 268 violators cited by HHS in those six and a half years, only 24 (or 9 percent) were penalized for breaking the law; 17 hospitals were fined amounts ranging from \$1,500 to \$150,000, and 7 were kicked out of Medicare. The remaining 244 offenders (91 percent) were never penalized, including 23 hospitals with repeated violations.²

Faced with criticism of this record, HHS acknowledged that a lack of reporting requirements seriously weakened its enforcement abilities. Without mandatory reporting of suspected violations, the agency has been largely dependent on voluntary complaints to bring possible cases of "patient dumping" to light. Vast discrepancies in the rate of HHS investigations in different parts of the country suggest that incidents are underreported in many areas. A 1993 Veterans' Administration report on inappropriate transfers from non-federal hospitals to VA hospitals revealed that most such incidents were not reported to either VA or HHS officials.

Proposed regulations published in 1988 would have remedied this problem years

¹ The latest period for which Public Citizen has analyzed HHS data. Preliminary data for 1993 indicate 60 more violations confirmed that year, with one hospital terminated from Medicare. Settlement agreements were concluded in 1993 for 5 hospitals, including fines ranging from \$5,000 to \$30,000.

² For a full discussion of HHS' enforcement activity from 1986 through 1992, see Public Citizen Health Research Group's report: Patient Dumping Continues in Hospital Emergency Rooms (May 1993). Copies are available for \$10.00 from Public Citizen, 2000 P Street, NW, Dept. PTD, Washington, DC 20036.

ago. But it has taken HHS six long years to finalize the regulations, during which time hospitals have continued to illegally deny care to countless numbers of patients with life-threatening emergencies.

The final rules to be published this week could make a tremendous difference in providing the safety net Congress intended for all persons in need of emergency care. In a key provision, the new rules require all hospitals that participate in Medicare to notify government officials "any time [they have] reason to believe [they] may have received an individual who has been transferred in an unstable emergency medical condition from another hospital" in violation of the "patient dumping" law. Hospitals that fail to report suspected violations within 72 hours can be terminated from the Medicare program. HHS states: "[T]he formal reporting procedures are an integral part of the Department's enforcement scheme to ensure that hospitals are complying with the statute. ... We are looking to those institutions in the best position to discern when an inappropriate transfer has taken place in violation of the statute, because Congress regards them also as victims of 'dumping'."

The regulations clarify HHS' interpretation of the law, incorporating rulings from some of the many lawsuits filed under the law since 1986. For example, the rules make clear that HHS need not prove that a violation occurred for an "impermissible" reason, such as the patient being poor or uninsured; rather, the law protects all persons seeking

emergency care.³ The rules also spell out how the law applies when an ambulance is diverted by radio from one hospital to another, so the patient never physically arrives at the hospital charged with denying emergency care.⁴ The rules state that the law applies to psychiatric emergencies and acute alcohol or drug intoxication, which have been the subject of enforcement disputes. The rules clarify important terms in the law and explain HHS' enforcement procedures, to help hospitals better understand what is required of them.

In addition to the guidance provided by the long overdue rules, they send a warning to would-be violators of the "patient dumping" law. HHS states: "When a hospital does violate its duties under ... the Act, we must take immediate action to prevent that hospital from jeopardizing the health and safety of the next person who may seek help in an emergency situation. Vigorous enforcement of these provisions is essential to remedy the problem that prompted Congress to legislate against denial of screening and/or treatment and the inappropriate transfer of individuals with emergency medical conditions." With these words, HHS sets a standard to which it must be held accountable, in contrast to its poor enforcement record of the past.

However, government vigilance alone will not end "patient dumping" as long as millions of people remain uninsured and clinical decisions are driven by concerns about

³ See Burditt v. U.S. Department of Health and Human Services, 934 F.2d 1362 (5th Cir. 1991).

⁴ See Johnson v. University of Chicago Hospitals, 982 F.2d 230 (7th Cir. 1992).

who pays the bill. Patients in life-threatening condition will continue to be denied care until access to health care is recognized and provided as a fundamental human right. True health care reform -- not just lip service and "mangled competition" -- is needed to put a stop to this unconscionable and deadly practice.

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Public Citizen's Health Research Group is a nonprofit consumer advocacy organization founded by Ralph Nader and Dr. Sidney Wolfe in 1971. Public Citizen has over 150,000 members.