

EMTALA Update: CMS Issues Guidance Clarifying Recent Changes

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Health Care

In March of this year, the Centers for Medicare and Medicaid Services (CMS) issued guidance clarifying three changes to the Emergency Medical Treatment and Labor Act (EMTALA) included in the 2009 Inpatient Prospective Payment System (IPPS) Final Rule. These significant changes involve community call plans, EMTALA waivers in times of national emergency and transfer obligations related to hospitals with specialized capabilities, as discussed in more detail below.

Community Call Plans

Pursuant to 42 CFR § 489.24(j)(2)(iii), a hospital may participate in formal community call plans with other hospitals to share on call responsibilities. If a hospital chooses to participate in a community call plan, the plan must:

- clearly define when each hospital is responsible for on call coverage and what services it will cover;
- describe the geographic area encompassed by the plan;
- contain documentation that local and regional EMS systems include information on the arrangements under the plan;
- contain a statement that an individual seeking emergency treatment at a hospital not designated as the on-call hospital will nevertheless receive a medical screening exam and stabilizing treatment within the capability of the hospital;
- contain a statement that participating hospitals will appropriately transfer patients in accordance with the EMTALA regulations;
- be assessed annually; and
- be signed by a representative of each hospital participating in the plan.

CMS also points out that hospitals which participate in community call plans must still have backup plans for times when the community call plan is nonoperational.

CMS is quick to note that participation in a community call plan does not relieve a hospital of its obligations to any individual who comes to its's dedicated emergency department. Regardless of whether the hospital is the one designated at that time for the service sought, it must provide

screening and stabilization within its capability and/or arrange for an appropriate transfer. A transfer would generally be appropriate if an individual presented to one hospital with an emergency medical condition that required the attention of a specialist on call at another hospital.

Hospitals are also required by EMTALA to maintain lists of on call physicians. If a hospital chooses to participate in a community call plan, its on call list should include not only physicians who are members of that hospital's medical staff, but also physicians at other participating hospitals who are on call under the community plan to provide specialty services to stabilize patients.

Emergency Waiver

During a national emergency, the Secretary of the Department of Health and Human Services (HHS) may temporarily waive EMTALA sanctions for the inappropriate transfer of an unstabilized patient or the diversion of a patient with an emergency medical condition to another location for a medical screening exam, in order to allow hospitals to implement their disaster plans to provide health care services in a disaster area. When a hospital activates its disaster plan and uses emergency waivers from HHS, it must notify the appropriate state agency (the North Carolina Department of Health and Human Services) so that CMS can track the number and locations of hospitals using waivers.

Specialized Capabilities

Last year, CMS issued a proposed rule that would require a hospital with specialized capabilities to accept the transfer of an unstable patient, even though the patient had been admitted to the first hospital where he or she presented with an emergency medical condition, as long as the receiving hospital had the capacity to treat the patient and the transfer was appropriate. This proposed rule was not adopted. Instead, CMS has now clarified that EMTALA obligations end once a patient with an emergency medical condition, even if unstable, is admitted in good faith to a hospital as an inpatient. A hospital with specialized capabilities that might receive the same patient as a transfer is not subject to EMTALA obligations regarding that transfer. A word of caution is appropriate, however – if a patient with an unstable emergency medical condition is not actually admitted to the first hospital, and transfer to a second hospital with specialized capabilities is sought, then EMTALA obligations do apply to the second hospital involved in the transfer.

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