

Health Care Alert

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CMS ISSUES GUIDELINES ON EMTALA REGULATIONS

The Centers for Medicare and Medicaid Services (CMS) recently issued guidance on revisions to the Emergency Medical Treatment and Labor Act of 1986 (EMTALA) found in the 2009 Inpatient Prospective Payment System (IPPS) Final Rule. CMS provided guidance on community call plans, emergency waivers, and obligations for hospitals with specialized capabilities. The following is a brief summary of the EMTALA guidance.

I. Community Call Plans.

Hospitals may participate in a community call plan (CCP) in order to satisfy EMTALA on-call responsibilities. A CCP allows hospitals to share on-call responsibilities as long as the following requirements are set forth in a written agreement that:

- Clearly defines when each hospital is responsible for on-call coverage;
- Defines specific geographic area to which the CCP applies;
- Is signed by representatives of each participating hospital;
- Ensures that the CCP is included in local and regional Emergency Medical Services (EMS) system protocols;
- Specifies that, in the event an individual arrives at a participating hospital that is not designated as the on-call hospital, the hospital still has an EMTALA obligation to provide a medical screening examination and stabilizing treatment within its capability, and appropriate transfers if necessary; and
- Provides for the annual reassessment of the CCP.

CMS guidance recommends that a CCP be “integrated into a community’s pre-hospital emergency services arrangements.” The goal of such integration is to allow for the identification of any need for specialty care while a patient is in transit to the hospital. This identification should facilitate the timely delivery of specialist stabilizing treatment.

However, if a patient is brought to a hospital participating in the CCP without current specialist care, CMS guidance is emphatic that a participating hospital remains obligated to conduct medical screening and stabilizing treatment or transfer pursuant to EMTALA. Transfer of the patient to the CCP



participating hospital for specialist treatment, or having a specialist travel to the hospital where the patient is presently located, are both to be permitted under a CCP.

Every participating hospital still remains responsible for ensuring that it provides adequate specialty coverage consistent with its resources. Every participating hospital must still maintain coverage and develop and maintain a back-up plan when the CCP is not operational.

II. Emergency Waiver Revisions.

During a national emergency, the Secretary of the Department of Health and Human Services (HHS) may waive certain EMTALA requirements for hospitals with dedicated emergency departments in order to facilitate health care services in a disaster area. The CMS guidance clarifies that hospitals must notify the relevant state agency (i.e. State of Connecticut Department of Public Health) when activating a disaster plan and utilizing emergency waivers made available by HHS. The purpose of this new requirement is to allow CMS to track the numbers and locations of hospitals using waivers.

III. Obligations for Hospitals with Specialized Capabilities.

CMS clarifies that a receiving hospital with specialized capabilities does not have an obligation under EMTALA to accept the transfer of a hospital inpatient. This clarification was necessary, because, in an April 2008 proposed rule, CMS expressed its intent to revise EMTALA regulations to state that where an unstable patient is admitted at one hospital and is subsequently transferred to a facility with specialized capabilities (e.g. burn, shock-trauma, or neonatal intensive care units), the facility with specialized capabilities has an obligation under EMTALA to accept the individual so long as the transfer was appropriate and the receiving hospital has the capacity to treat the individual. The proposed rule generated a significant number of negative comments. In response to those comments, EMTALA now provides that when an individual with an unstable emergency medical condition is admitted in good faith to a hospital as an inpatient, EMTALA obligations end. Therefore, any subsequent hospital with specialized capabilities that is considered for transfer would not be subject to the EMTALA requirements with respect to that particular transfer.

IV. Action Items.

Hospitals may consider coordinating efforts with one or more area hospitals by using a CCP to ensure compliance with EMTALA coverage responsibilities.

Questions or Assistance?

If you have any further questions regarding the EMTALA regulations, please feel free to contact either Joan Feldman or David Mack.

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