

CMS Announces Final Regulations Clarifying EMTALA Obligations

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Practice Area: Health Law

On September 9, 2003, the Centers for Medicare & Medicaid Services ("CMS") published final regulations that modify the obligations of a Medicare-participating hospital under the Emergency Medical Treatment and Active Labor Act ("EMTALA"). The regulations, effective November 10, 2003, attempt to clarify existing hospital obligations under EMTALA by defining when EMTALA is triggered, both on and off the hospital's main campus, and whether its application extends to hospital outpatients and inpatients. The regulations also address physician on-call requirements, the application of EMTALA to hospital-owned ambulances, and the adoption of a new Medicare condition of participation.

Dedicated Emergency Department

CMS limits the definition of hospital emergency department in the final regulations. The regulations define a hospital emergency department as a "dedicated emergency department" which is any department or facility, located on or off the main hospital campus, that is: (i) licensed by the State as an emergency department, (ii) held out to the public (by name, signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without a previously scheduled appointment, or (iii) based on a representative sample of patient visits that occurred during the calendar year, that department or facility provided at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. Hospital-based urgent care centers likely meet this new definition. CMS comments indicate that the new definition also could include departments of the hospital that are not traditionally considered emergency departments. For instance, labor and delivery departments or psychiatric units that provide emergency services could be considered dedicated emergency departments, even if it is the hospital's practice to admit patients as inpatients to these departments.

Individual Comes to the Dedicated Emergency Department

CMS clarifies when EMTALA applies to an individual who comes to a dedicated emergency department. The regulations state that EMTALA applies to any individual who comes to a dedicated emergency department if the individual requests an examination or treatment for a medical condition, or if a prudent layperson observer would believe, based on the individual's appearance or behavior, that such examination or treatment is necessary. CMS's comments to the regulations reiterate that all EMTALA medical screening examinations need not be equally extensive. For instance, if the nature of an individual's request makes it clear that he or she is not seeking emergency care, a qualified medical personnel's brief questioning is sufficient to establish that there is no emergency medical condition and satisfies the hospital's EMTALA obligation. CMS further states that, for EMTALA purposes, not every medical screening examination would need to involve taking the individual's vital signs.

Individual Comes to the Dedicated Emergency Department for Non-Emergency Services

The comments to the regulations also recognize that EMTALA does not apply to individuals who come to the dedicated emergency department for purposes other than an examination or treatment for a medical condition. To illustrate, CMS states in the commentary that requests for preventative care services do not trigger EMTALA's requirement to provide a medical screening examination, but CMS does not provide any specific examples of what constitutes preventative care services. Requests for pharmaceutical services, however, do trigger EMTALA obligations, and requests by law enforcement authorities for medical clearance are to be evaluated on a case-by-case basis. CMS further clarifies in the commentary whether EMTALA applies to an individual who comes to a dedicated emergency department at a physician's direction for laboratory and radiology services. An individual's requests for only a simple diagnostic test or imaging service generally would not be considered a request for examination or treatment that would result in a hospital obligation to the individual under EMTALA. However, if the prudent layperson standard is met, the hospital would have an EMTALA obligation to the individual.

Outpatient Services on the Hospital's Main Campus

CMS further clarifies that EMTALA also does not apply to an individual who experiences what may be an emergency medical condition if the individual has already begun outpatient services at the hospital in an area other than a dedicated emergency department. This standard even applies to individuals who come to the hospital for outpatient services that do not require a physician order, such as an annual mammogram or health fair. The Medicare hospital conditions of participation, including the obligation to meet the emergency needs of patients in accordance with acceptable standards of practice, will govern the hospital's responsibilities in these situations. This holds true even if the individual is later transferred to the hospital's dedicated emergency department. However, since the Medicare conditions of participation do not apply to individuals who are not hospital patients, such as hospital employees or visitors who experience what may be an emergency medical condition, CMS states that these individuals fall under the protection of EMTALA.

Hospital Inpatients

The final regulations make it clear that EMTALA does not apply to hospital inpatients (an inpatient is defined as a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services), regardless of whether they are admitted from the emergency department or on an elective basis. This includes individuals who are boarded and admitted in the dedicated emergency department if, generally, they have been admitted by the hospital with the expectation that they will remain at least overnight and occupy beds in the hospital. According to the comments, hospital obligations to inpatients fall under the Medicare conditions of participation, state law and other professional considerations rather than EMTALA. Therefore, hospitals are not subject to the EMTALA transfer and stabilization requirements once a patient is admitted as an inpatient. If it is discovered that a hospital admits a patient in bad faith as a means of avoiding EMTALA requirements, liability under EMTALA may attach.

Off-Campus Hospital Departments

The final regulations provide that EMTALA applies to off-campus departments only if the departments qualify as "dedicated emergency departments." To address off-campus hospital departments that do not provide emergency services, CMS added a new Medicare condition of participation under the regulations. The new condition of participation requires that, if emergency services are provided at the hospital but not at one or more off-campus departments of the hospital, the hospital governing body is required to assure that the medical staff has written policies and procedures in effect for the off-campus departments for appraisal of emergencies and referral when appropriate.

On-Campus Provider-Based Departments

Similarly, CMS requires that all provider-based departments located on the hospital campus that meet the definition of “dedicated emergency department” comply with EMTALA requirements. In contrast, EMTALA does not apply to on-campus, non-hospital provider-based entities. For the purpose of defining hospital campus, the 250-yard test under the provider-based rules will be applied and includes parking lots, sidewalks and driveways. Areas such as physician offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare, as well as restaurants, shops and other non-medical facilities, are excluded from the meaning of hospital campus.

On-Call Requirements

Under the final regulations, CMS allows hospitals flexibility in complying with EMTALA physician oncall requirements, but declines to specify minimum requirements for compliance with this obligation. Rather, the regulations state that hospitals are required to maintain a list of on-call physicians “in a manner that best meets the needs of the hospital’s patients who are receiving services required under [EMTALA] in accordance with the resources available to the hospital, including the availability of the oncall physicians.” According to CMS, this standard does not require physicians to be on-call at all times, but the hospital must have written policies and procedures to respond to situations in which a particular specialty is not available. Likewise, physicians are permitted to be on-call simultaneously at more than one hospital and to schedule elective surgery while on call, provided the hospital has written policies and procedures to follow if the on-call physician is not available to respond when needed. The comments to the regulations also suggest that mid-level providers, such as physician assistants, could respond to a call from the emergency department under certain circumstances.

Hospital-Owned Ambulances

The final regulations also clarify that EMTALA requirements are not triggered with respect to individuals who are in hospital-owned ambulances for the hospital that owns the ambulance when the hospital-owned ambulance operates under: (i) community-wide EMS protocols and transports an individual to a hospital other than the one that owns the ambulance, or (ii) at the direction of a physician who is neither employed by, nor affiliated with, the hospital that owns the ambulance. The individual is considered to have come to the emergency department of the hospital to which the individual is transported at the time the individual is brought onto hospital property. This applies to both air and ground ambulances.

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