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Practice Area: Health Law

In the May 9, 2002. Federal Register, CMS published a proposed rule clarifying EMTALA's requirements in the situations listed below. A link to an article on our web site providing a more thorough explanation of the proposed rule and specific examples provided by the CMS follows this summary.

"Comes to the Emergency Department"

CMS provides guidance for hospitals to determine hospital property locations to which EMTALA applies. In a major policy shift, CMS is proposing that EMTALA only apply to (i) a hospital's "dedicated emergency department," or (ii) elsewhere on a hospital's property in which patients attempt to gain access to the hospital for emergency care. The proposed rule defines the term "dedicated emergency department" as "a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions..., and is either located: (1) on the main hospital campus, or (2) off the main hospital campus and is treated by Medicare...as a department of the hospital." Therefore, EMTALA applies to a hospital's dedicated emergency department and any other departments of the hospital that are held out to the public as an appropriate place to come to the hospital for medical services on an urgent, nonappointment basis (i.e., labor and delivery department, psychiatric unit, etc.).

Individual Presents at an Area of the Hospital on the Hospital's Main Campus Other Than the Dedicated Emergency Department

CMS proposes to clarify that EMTALA only applies to a hospital's main campus areas other than a hospital's "dedicated emergency department" where, in an attempt to gain access to the hospital for emergency care, an individual comes to a hospital and requests an examination or treatment for a medical condition that may be an emergency. This obligation would apply if the individual believes he or she has an emergency medical condition, or if a prudent layperson observer would believe, based upon the individual's appearance or behavior, that the individual needs emergency examination or treatment. Therefore, EMTALA would mandate that a hospital provide for screening and stabilization services, if an individual presents at a main campus area of the hospital in an attempt to gain access to the hospital for emergency care.

Individual Who Comes to Hospital as an Outpatient for a Previously Scheduled Appointment and Experiences an Emergency Medical Condition

In the proposed rule, CMS acknowledges that EMTALA does not apply when individuals come to a hospital on nonemergency, outpatient basis. CMS proposes that EMTALA would not apply to an outpatient with a previously scheduled appointment, even if such individual experiences an emergency medical condition while at a hospital outpatient department. CMS is quick to note, however, that while an EMTALA obligation may not exist in this circumstance, a hospital is still bound by Medicare's hospital conditions of participation which require a hospital to fulfill its condition of participation responsibilities for emergency care by contacting the hospital's dedicated emergency department.

Individual Who is a Hospital Inpatient Experiences an Emergency Medical Condition

CMS proposes to clarify that EMTALA generally does not apply to individuals who are inpatients of a hospital. CMS acknowledges that EMTALA was not intended to apply to admitted inpatients who become unstable after admission to a hospital. However, EMTALA will apply to a situation in which an individual is admitted as an inpatient whose emergency medical condition has not been stabilized by the hospital. CMS clearly states that a hospital cannot admit an individual as an inpatient and subsequently transfer the individual to another hospital to evade its EMTALA responsibilities.

Applicability of EMTALA to Off-Campus Hospital Departments

CMS proposes to limit the applicability of EMTALA to only those off-campus departments of a hospital that are "dedicated emergency departments" as defined by the proposed rule. If a hospital's off-campus department is considered a dedicated emergency department for EMTALA purposes, all of EMTALA's obligations that apply to the hospital's main campus also apply to the hospital's dedicated emergency departments located off-campus.

Applicability of EMTALA to On-Campus Provider Based Entities

CMS proposes that EMTALA apply only to those hospital on-campus departments that are provider-based, and CMS proposes that EMTALA not apply to separate provider-based entities that are not under the certification and provider number of the main hospital. CMS proposes to specifically exclude locations of the hospital that are not certified hospital space such as physician offices, RHCs, SNFs, or other entities that participate separately in Medicare, or restaurants, shops, or other nonmedical facilities.

EMTALA Applicability to Hospital-Owned Ambulances

According to existing CMS policy, if an individual is in a hospital-owned ambulance, the individual is deemed to have come to the hospital's emergency department for EMTALA purposes, even though the ambulance may not be on hospital property. CMS proposes an exception to this policy if the hospital-owned ambulance operates under a community-wide EMS protocol that requires the hospital-owned ambulances to transport individuals to locations other than the hospital that owns the ambulance (i.e., the nearest hospital to the patient geographically, whether or not that hospital owns the ambulance).

Individual Comes to the "Dedicated Emergency Department" for Nonemergency Services

CMS proposes to clarify that hospitals have an obligation under EMTALA to provide an appropriate medical screening examination to any individual who comes to a hospital's "dedicated emergency department." This obligation exists whether an express request for an examination or treatment is made by an individual or on behalf of the individual. If the medical condition is not of an emergency nature, the hospital is only required to perform an appropriate screening to determine that the individual does not have an emergency medical condition.

EMTALA and On-Call Requirements

CMS agrees that hospitals must have flexibility in determining on-call coverage. In determining EMTALA compliance, CMS will consider all factors relevant to a hospital's on-call coverage, including the number of physicians on staff, other demands on these physicians, the frequency with which the hospital's patients typically require services of on-call physicians, and the provisions the hospital has made for situations in which a physician in the specialty is not available or the on-call physician is unable to respond. CMS acknowledges that hospitals may grant on-call exemptions to certain members of a hospital's medical staff, provided such exemptions do not adversely affect patient care.

Prior Authorization

CMS proposes to prohibit hospitals from seeking authorization from a patient's insurance company for screening or stabilization services until after a hospital has provided screening and stabilization services required by EMTALA.

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