



Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-07-20

DATE: April 27, 2007
TO: State Survey Agency Directors
FROM: Director
Survey and Certification Group
SUBJECT: EMTALA Issues Related to Emergency Transport Services

Memorandum Summary

- Hospitals may not condition their acceptance of an Emergency Medical Treatment and Labor Act (EMTALA)-related transfer upon the sending hospital's agreement to use a specific transport service designated by the receiving hospital.
- S&C-06-21 should not be interpreted to mean that a hospital cannot ever ask Emergency Medical Services (EMS) staff to stay with an individual transported by EMS to the hospital when the hospital does not have the capacity or capability to immediately assume full responsibility for the individual.

The Emergency Medical Treatment and Labor Act Technical Advisory Group (EMTALA TAG) received testimony indicating that instances have occurred where a hospital has refused to accept an appropriate transfer of an individual with an emergency medical condition unless the sending hospital used an air medical service owned by the receiving hospital for the transfer. The EMTALA TAG recommended that the Centers for Medicare & Medicaid Services (CMS) issue guidance on this matter.

It is a violation of the EMTALA requirements for a receiving hospital to condition its acceptance of an appropriate transfer of an individual with an emergency medical condition upon the sending hospital's use of a particular transport service to accomplish the transfer. Specifically, 42 CFR 489.24 (f) reads in pertinent part as follows:

Recipient hospital responsibilities. A participating hospital that has specialized capabilities...may not refuse to accept from a referring hospital within the boundaries of the United States an appropriate transfer of an individual who requires such specialized capabilities or facilities if the receiving hospital has the capacity to treat the individual.

If in the course of an EMTALA investigation there is evidence that a hospital with specialized capabilities or facilities and the necessary capacity to treat an individual with an emergency medical condition conditioned, or attempted to condition, its acceptance of an appropriate transfer of the individual on the use by the sending hospital of a particular transport service instead of the transport arrangements made by the attending physician at the sending hospital, then the receiving hospital is to be cited for violation of EMTALA Tag A411.

The EMTALA TAG also requested that CMS issue a clarification of the guidance provided in S&C-06-21, issued on July 13, 2006, concerning "parking" of individuals transported by emergency medical services (EMS) to hospitals. The memorandum was intended to address the specific concern that some hospital Emergency Department (ED) staff may deliberately delay the transfer of individuals from the EMS provider's stretcher to an ED bed under the mistaken impression that the ED staff is thereby relieved of their EMTALA obligation. However, it was reported to the TAG by hospital representatives that some EMS organizations have cited this memorandum as requiring hospitals to take instant custody of all individuals presenting via EMS transport at the hospital's dedicated emergency department.

The memorandum was intended to reinforce that the EMTALA responsibility of a hospital with a dedicated ED begins when an individual arrives on hospital property (ambulance arrival) and not when the hospital "accepts" the individual from the gurney. An individual is considered to have "presented" to a hospital when he/she arrives at the hospital's dedicated ED or on hospital property and a request is made by the individual or on his/her behalf for examination or treatment of an emergency medical condition. (42 CFR 489.24(b)). Once an individual comes to the emergency department of the hospital, whether by EMS or otherwise, the hospital has an obligation to provide an appropriate medical screening examination and, if an emergency medical condition is determined to exist, provide any necessary stabilizing treatment or an appropriate transfer. (42 CFR 489.24(a) and (b)). Failure to meet these requirements constitutes a potential violation of EMTALA.

On the other hand, this does not mean that a hospital will necessarily have violated EMTALA if it does not, in every instance, immediately assume from the EMS provider all responsibility for the individual, regardless of any other circumstances in the ED. For example, there may be situations when a hospital does not have the capacity or capability at the time of the individual's presentation to provide an immediate medical screening examination (MSE) and, if needed, stabilizing treatment or an appropriate transfer. So, if the EMS provider brought an individual to the dedicated ED at a time when ED staff was occupied dealing with multiple major trauma cases, it could under those circumstances be reasonable for the hospital to ask the EMS provider to stay with the individual until such time as there were ED staff available to provide care to that individual. However, even if a hospital cannot immediately provide an MSE, it must still triage the individual's condition immediately upon arrival to ensure that an emergent intervention is not required and that the EMS provider staff can appropriately monitor the individual's condition. All cases of this kind will be reviewed on a case-by-case basis and any decision regarding EMTALA compliance will be made by the CMS Regional Office only after a full review of all relevant facts and circumstances.

For questions on this memo, please contact Donna Smith at (410) 786-3255 or by email at Donna.Smith@cms.hhs.gov.

Effective Date: Immediately. State agencies should disseminate this information within 30 days of the date this memorandum.

Training: The information contained in this announcement should be shared with all survey and certification staff, surveyors, their managers, and with managers who have responsibility for processing EMTALA complaints.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management