

EMTALA Update



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Outline

- Why did we propose revisions to our EMTALA regulations?
- What are the new regulations?
- What are the next steps?

Why Revise the Regulations?

- Provide clear rules that recognize the real world of medical practice in hospital emergency departments
- Concern about ED overcrowding, and that the current EMTALA regulations might be exacerbating the problem.
- Lack of understanding over what the law and our regulations required

Why Revise the Regulations?

- Inconsistent enforcement of the requirements of EMTALA across states and CMS regions
- Conflicting court opinions exacerbate inconsistencies
- Protect patients' rights under the statute

Major Provisions of Final Regulation

- Where in the hospital does EMTALA apply?
- When do EMTALA obligations end?
- What are a hospital's and a physician's on-call obligations under EMTALA?
- EMTALA and hospital-owned ambulances
- Codification of EMTALA's patient protections

Major Provisions of Final Regulation

- Where in the hospital does EMTALA apply?
 - Patients who enter the “dedicated emergency department”
 - Patients who come to the hospital, but not to the DED
 - Patients who come to a provider-based entity

Major Provisions of Final Regulation

- **DED Definition**

- DED was defined as the entity that serves as an ED “a significant portion of the time.”
 - Commenters said: definition too vague
- Final regulation defines DED as the entity:
 - Licensed by the state as the ED
 - Holds itself out to the public as an ED; OR
 - During the preceding calendar year, provided at least 1/3 of its outpatient visits for the examination or treatment of EMCs.
- Patients arriving in DED requesting examination for a medical condition: full range of EMTALA protections

Major Provisions of Final Regulation

- Applicability of EMTALA to individuals arriving at the hospital not in the DED
 - Two possibilities
 - Visitors
 - Patients

Major Provisions of Final Regulation



- Visitors
 - Hospital has an EMTALA obligation if individual is suffering (or a PLP believed was suffering) an EMC
- Patients (outpatients)
 - No EMTALA obligation
 - Patient protected by CoPs

Major Provisions of Final Regulation

- Applicability of EMTALA to arriving hospital patients or visitors (cont'd.)
 - EMTALA would apply to visitors who are in the hospital and experience an EMC
 - PLP Standard

Major Provisions of Final Regulation

- Individuals who come to a provider-based entity
 - No EMTALA obligation unless the provider-based entity meets the definition of DED
 - This is consistent with good medical practice and was the most widely-praised provision of the NPRM

Major Provisions of Final Regulation

- Applicability of EMTALA to inpatients
 - Why it's important
 - Supreme Court oral arguments in *Roberts v. Galen of Virginia*
 - A string of opinions in U.S. Courts of Appeal
 - Imprecise statutory drafting

Major Provisions of Final Regulation



- Proposed regulation
 - EMTALA applies to unstabilized inpatients admitted through the ED
 - EMTALA does not apply to inpatients admitted on a scheduled basis

Major Provisions of Final Regulation

- Final regulation treats all inpatients the same: EMTALA obligations end once the patient is admitted
 - Consistent with four Circuit Court opinions and one District Court opinion
 - Faithful reading of the statute and intent of EMTALA
 - Patients protected by hospital CoPs and state malpractice law, as well as laws protecting against “patient abandonment.”

Major Provisions of Final Regulation



- Inpatients (cont'd.)
 - Hospitals are cautioned against “subterfuge” admissions in Preamble and regulation text, and CMS will monitor what is happening in the field

Major Provisions of Final Regulation

- EMTALA and “on-call”
 - We addressed this issue because of common mis-conceptions over on-call requirements
 - On-call requirements:
 - Hospitals must maintain a list of physicians who agree to take call
 - Physicians on list must show up when called
 - This is a condition of participation

Major Provisions of Final Regulation

- On-call (cont'd.)
 - Not required:
 - Physicians are not required to take call nor are physicians required to be on call at all times.
 - No “Rule of 3”
 - Permitted
 - Simultaneous call
 - Performing surgery while on call if a suitable back-up plan

Major Provisions of Final Regulation

- On-call (cont'd.)
 - Changes from proposed rule
 - “Best meets the need of the patient” standard modified to include language recognizing that resource limitations of the hospital.
 - “Best meets the needs of patients who are receiving services required under EMTALA in accordance with the capability of the hospital, including the availability of on-call physicians.”

Major Provisions of Final Regulation

- EMTALA and hospital-owned ambulances
 - Current rule: EMTALA applies to hospital-owned ambulances, even if not on hospital property
 - Final rule: EMTALA continues to apply to hospital-owned ambulances, but if ambulance diverts patients due to community-wide EMS protocols on hospital diversion, no EMTALA violation

Major Provisions of Final Regulation

- Codification of patient protections
 - Former OIG/HCFA notice on managed care patient protections
 - Never codified; issued as a Federal Register notice
 - Final regulations codify the HCFA/OIG notice in 42 CFR § 489.24

Other EMTALA News

- Provisions in House, Senate Medicare modernization legislation
- EMTALA Commission

Next Steps

- Public presentations to explain new regulations
- Training of regional offices and state surveyors
- Consider further reforms as necessary
 - EMTALA in bioterrorism or other public health emergencies
 - EMTALA and psychiatric patients