EMTALA Update

Leslie V. Norwalk, Esq.
Deputy Administrator
CMS
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.”
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