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**CMS NEWS**

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**MEDICARE ANNOUNCES FINAL RULE ON HOSPITAL RESPONSIBILITIES  
TO PATIENTS SEEKING TREATMENT FOR EMERGENCY CONDITIONS**

The Centers for Medicare & Medicaid Services (CMS) today issued a final rule clarifying hospital obligations to patients who request treatment for emergency medical conditions under the Emergency Medical Treatment and Labor Act (EMTALA).

The revisions provide clear, common sense rules for responding to people who come to a hospital for treatment of an emergency condition. They are designed to ensure that people will receive appropriate screening and emergency treatment, regardless of their ability to pay, while removing barriers to the efficient operation of hospital emergency departments.

“The regulation we are announcing today carries out EMTALA in a common sense and effective way to ensure that people who come to hospitals seeking emergency care are promptly screened and stabilized,” said CMS Administrator Tom Scully. “The rule will improve people’s access to emergency care by encouraging physicians to be on call and by permitting hospitals to take the most effective steps for getting emergency treatment for patients who need it.”

EMTALA requires a hospital to provide an appropriate medical screening examination to any person who comes to the hospital emergency department and requests treatment or an examination for a medical condition. If the examination reveals an emergency medical condition, the hospital must also provide either necessary stabilizing treatment or an appropriate transfer to another medical facility.

EMTALA applies to all hospitals that participate in the Medicare program and offer emergency services and covers all patients treated at those hospitals, not just those who receive Medicare benefits. Hospitals that violate EMTALA may have their Medicare participation terminated and may be subject to civil money penalties ("CMPs") of up to \$50,000 per violation. Individuals who have suffered personal harm and hospitals to which a patient has been improperly transferred and that have suffered financial loss as a result of the transfer are also provided a private right of action against hospitals that violate EMTALA.

The new rule expands the definition of emergency department to mean any department or facility of the hospital, whether situated on or off the main hospital campus, that: (1) is licensed by the state as

an emergency room or emergency department; (2) is held out to the public as providing care for emergency medical conditions without requiring an appointment; or (3) during its previous calendar year, has provided at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis.

Other key provisions of the final rule include:

- Clarification of the circumstances in which physicians, particularly specialty physicians, must serve on hospital medical staff "on-call" lists. Under the revised regulations, hospitals will have discretion to develop their on-call lists in a way that best meets the needs of their communities. In keeping with traditional practices of "community call," physicians will be permitted to be on call simultaneously at more than one hospital, and to schedule elective surgery or other medical procedures during on-call times.
- Clarification that hospital-owned ambulances may comply with citywide and local community protocols for responding to medical emergencies and thus be used more efficiently for the benefit of their communities.
- Permits hospital departments that are off-campus to provide the most effective way of caring for emergency patients without requiring that the patient be moved to the main campus—when this would not be best for the patient.

The final rule clarifies that EMTALA does not apply to individuals who come to off-campus outpatient clinics that do not routinely provide emergency services or to those who have begun to receive scheduled, non-emergency outpatient services at the main campus – for example, routine laboratory tests. Other regulations and state licensing laws already cover the hospital's obligations to patients in such circumstances.

In addition, the rule clarifies that EMTALA does not apply after a patient has been seen, screened, and admitted for inpatient hospital services, unless the admission is made in bad faith to avoid the EMTALA requirements. This provision was adopted to conform to the decisions of five circuits of the United States Courts of Appeals.

"We believe this regulation will help to ensure that emergency departments and specialty physicians are there for those who need them," Administrator Scully said. "It is consistent with the recommendations of the Secretary's Advisory Committee on Regulatory Reform to help hospitals focus less on unnecessary requirements and more on providing quality care to their patients."

The final rule will be published in the September 9, 2003 *Federal Register*, and becomes effective November 10, 2003.

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