

## *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?

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## *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

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### *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

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### *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

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### *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

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## *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

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## *Major Provisions of Final Regulation*

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

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## *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

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*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

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*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

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*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

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*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

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*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.”

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*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

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*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

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*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

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*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.”

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*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

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*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

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*Other EMTALA News*

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

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### *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

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