Detaining EMS Personnel and Equipment

CMS Survey & Certification Memoranda 06-21 and 07-20 (July 13, 2006 and April 27, 2007)

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-06-21

DATE: **July 13, 2006**

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: **EMTALA -** "Parking" of Emergency Medical Service Patients in Hospitals

Letter Summary

- The Centers for Medicare & Medicaid Services (CMS) has received reports from hospital emergency departments concerning patients being left on stretchers for extended periods of time with emergency medical service personnel in attendance, possibly in violation of the Emergency Medical Treatment and Labor Act.
- CMS recognizes the enormous strain and crowding many hospital emergency departments face every day; however, this practice is not a solution.
- "Parking" patients in hospitals impacts the ability of the emergency medical service personnel to provide emergency services to the rest of the community.

The Centers for Medicare & Medicaid Services (CMS) has learned that several hospitals routinely prevent Emergency Medical Service (EMS) staff from transferring patients from their ambulance stretchers to a hospital bed or gurney. Reports include patients being left on an EMS stretcher (with EMS staff in attendance) for extended periods of time. Many of the hospital staff engaged in such practice believe that unless the hospital "takes responsibility" for the patient, the hospital is not obligated to provide care or accommodate the patient. Therefore, they will refuse EMS requests to transfer the patient to hospital units.

This practice may result in a violation of the Emergency Medical Treatment and Labor Act (EMTALA) and raises serious concerns for patient care and the provision of emergency services in a community. Additionally, this practice may also result in a violation of 42 CFR 482.55, the Conditions of Participation for Hospitals for Emergency Services, which requires that a hospital meet the emergency needs of patients in accordance with acceptable standards of practice.

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A hospital has an EMTALA obligation as soon as a patient "presents" at a hospital's dedicated emergency department, or on hospital property (as defined at 42 CFR 489.24(b)) other than the dedicated emergency department, and a request is made on the individual's behalf for examination or treatment of an emergency medical condition. A patient who arrives via EMS meets this requirement when EMS personnel request treatment from hospital staff. Therefore, the hospital must provide a screening examination to determine if an emergency medical condition exists and, if so, provide stabilizing treatment to resolve the patient's emergency medical condition. Once a patient presents to the dedicated emergency department of the hospital, whether by EMS or otherwise, the hospital has an obligation to see the patient, as determined by the hospital under the circumstances and in accordance with acceptable standards of care.

EMTALA obligations would also apply to a hospital that has accepted transfer of a patient from another facility, as long as it is an "appropriate transfer" under EMTALA. An appropriate transfer is one in which the transferring hospital provides medical treatment that minimizes risks to an individual's health and the receiving hospital has the capability and capacity to provide appropriate medical treatment and has agreed to accept transfer (42 CFR 489.24(e)(2)). Therefore, the expectation is that the receiving facility has the capacity to accept the patient at the time the transfer is effectuated. A hospital that delays the medical screening examination or stabilizing treatment of a patient who arrives via transfer from another facility, by not allowing EMS to leave the patient, could also be in violation of EMTALA.

CMS recognizes the enormous strain and crowding many hospital emergency departments face every day. However, this practice is not a solution. "Parking" patients in hospitals and refusing to release EMS equipment or personnel jeopardizes patient health and impacts the ability of the EMS personnel to provide emergency services to the rest of the community.

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. The State agencies should disseminate this information within 30 days of the date of 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 (G-5)

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.*

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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.

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