

CMS Letter Regarding Transfer of Patients to Crisis Stabilization Units

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-12-25
Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations/Survey and Certification Group

November 12, 2009

Mr. Steve Lipton
Davis Wright Tremaine LLP
Suite 800
505 Montgomery Street
San Francisco, CA 94111-6533

COPY

Dear Mr. Lipton:

Your inquiry dated June 24, 2009 to the Centers for Medicare and Medicaid Services (CMS) Regional Office (RO) in San Francisco regarding the transfer of behavioral emergency patients to crisis stabilization units (CSUs) in California was forwarded to CMS Central Office for response. According to your letter, you are seeking guidance on the compliance of a hospital with EMTALA requirements if it transfers an individual who has come to that hospital's emergency department to a State of California-designated CSU for the continued provision of "evaluation and treatment for behavioral patients in crisis involving patients under an involuntary hold". You also indicated that such a transfer would only occur after these individuals had undergone a medical screening examination and been subsequently determined to have an unstabilized emergency medical condition, as defined by the EMTALA statute at Section 1867 of the Social Security Act ('the Act'). We appreciate the ongoing challenges hospitals and communities face in obtaining care for individuals with psychiatric emergencies and interest in assessing whether various arrangements would be consistent with EMTALA requirements. However, please be advised that CMS does not review hospital policies and render determinations on their compliance with the EMTALA regulations outside the context of the investigation of a specific EMTALA complaint. EMTALA compliance is very case/fact-sensitive.

For your information, CMS' official interpretation of the EMTALA regulatory requirements for hospitals concerning the stabilization and the appropriate transfer of individuals with emergency medical conditions (EMCs) is contained in the Interpretive Guidelines located in Appendix V of the State Operations Manual

(http://www.cms.hhs.gov/manuals/downloads/som107ap_v_emerg.pdf). This guidance affirms that, when evaluating whether a transfer of an individual protected under EMTALA is appropriate, we look at the relevant regulatory requirements including, but not limited to, 1) did the transferring hospital provide the necessary stabilizing treatment within its capacity so as to minimize the risks of the transfer; and 2) whether a physician certified that the medical benefits reasonably expected from the provision of *appropriate medical treatment* [emphasis added] at another medical facility outweigh the increased risks from effecting the transfer. Thus, transfer

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to a medical facility that lacked the capacity to stabilize the EMC would not be consistent with EMTALA. Your client might find it prudent as it develops transfer policies to assess the capabilities of CSUs to provide appropriate stabilizing treatment to individuals with psychiatric emergency medical conditions.

Once again, thank you for your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn Dahl".

Marilyn Dahl
Director, Division of Acute Care Services

cc: Rufus Arther, CMS RO9