DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services

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FROM: Director
Survey and Certification Group
Center for Medicaid and Medicare Services

SUBJECT: On-Call Requirements-EMTALA

TO: Associate Regional Administrators
Division of Medicaid and State Operations
Region I-X

The purpose of this program memorandum is to provide guidance to regional offices, state survey agency personnel and hospitals regarding the Emergency Medical Treatment and Labor Act (EMTALA). It has come to our attention that the medical community has concerns that the implementation and enforcement of EMTALA for on-call physicians is not being applied consistently across the country. We have prepared the following questions and answers based on questions we have received to clarify hospital responsibilities concerning on-call physicians.

1.Q. Is the hospital's medical staff required to provide on-call physician services 24 hours/day 365 days/year?

1. A. EMTALA requires that an individual be evaluated and provided with medical support services and/or transfer arrangements that are consistent with the capability of the institution and the well-being of the patient. The Social Security Act at §1866(a)(1)(I)(iii) requires that hospitals have a list of physicians who are on-call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition. The hospital's capabilities include the skills of a specialist who has staff privileges to the extent that the hospital requires the specialist to furnish these services. If a physician on the list is called by a hospital to provide emergency screening or treatment and either refuses or fails to arrive within a reasonable time, the hospital and that physician may be in violation of EMTALA (§1867 (d)(1)(C)).

The State Operations Manual (SOM) further clarifies a hospital's responsibility for the on-call physician. The SOM (Appendix V, page V-15, Tag A404) states:

--Each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patients.

--Physicians, including specialists and subspecialists (e.g., neurologists) are not required to be on-call at all times. The hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

Therefore, reading the statute and the State Operations Manual together, CMS does not require that a hospital's medical staff provide on-call coverage 24 hours/day, 365 days/year. If there comes a particular time that a hospital does not have on-call coverage for a particular specialty, that hospital lacks capacity to treat patient needing that specialty service and it is therefore appropriate to transfer the patient because the medical benefits of transfer outweigh the risks.

2.Q. How frequently is a hospital's medical staff of on-call physicians expected to provide on-call coverage?

2.A. Medicare does not set requirements on how frequently a hospital's medical staff of on-call physicians is expected to provide on-call coverage. Hospitals are expected to provide services based upon the availability of physicians required to be on-call. We are aware that practice demands in treating other patients, conferences, vacations, and days off must be incorporated into the availability of staff. We are also aware that there are some hospitals that have limited financial means to maintain on-call coverage all of the time. CMS allows hospitals flexibility to comply with EMTALA obligations by maintaining a level of on-call coverage that is within their capability.

3.Q. It has been the practice of many hospitals to allow their senior medical staff physicians to be exempted from on-call duties. This exemption is usually written into the hospital's medical staff by-laws or the hospital's rules and regulations, and recognizes a physician's active years of service (20 or more years) or age (i.e., 60 years of age or older), or a combination of both. Does the Center for Medicare and Medicaid Services (CMS) recognize senior physician exemptions as legitimate in the context of EMTALA?

3.A. The hospital is responsible for maintaining an on-call list in a manner that best meet the needs of its patients as long as the exemption does not affect patient care adversely; CMS allows hospitals flexibility in the utilization of their emergency personnel. Thus, providing such exemptions to medical staff members would not by itself violate EMTALA.

4.Q. Is there a ratio CMS requires identifying how many days that a hospital must provide medical staff on-call physician based upon the number of physicians on staff for that particular specialty (i.e., whenever there are at least 3 physicians in a specialty is 24/7 coverage required?)

4.A. No. On-call coverage should be provided for within reason depending upon the number of physicians in a specialty. A determination about whether a hospital is in compliance with these regulations must be based on the facts in each individual case. CMS will consider all relevant factors, including the number of physicians on staff, other demands on these physicians, the frequency with which the hospital's patients typically require services of on-call physicians, and the provisions the hospital has made for situations in which a physician in the specialty is not available or the on-call physician is unable to respond.

5.Q. Can two hospitals in the same geographic area share on-call coverage so that, together they are providing 100 percent call coverage in a particular speciality? Are there guidelines or rules by which this community call can be implemented so that hospitals are in compliance with EMTALA?

5.A. CMS believes hospitals should continue to have the flexibility to meet their EMTALA obligations by managing on-call physician coverage in a manner that maximizes patient stabilizing treatment as efficiently and effectively as possible.

When the on-call physician is simultaneously on-call at more than one hospital in a particular geographic, all hospitals involved must be aware of the on-call schedule as each hospital independently has an EMTALA obligation. Of course, as stated in the interpretive guidelines (State Operations Manual (SOM), Appendix V, page V-15) the medical staff by-laws or policies and procedures must define the responsibilities of on-call physicians to respond, examine and treat patients with emergency medical conditions, and the hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control. The policies and procedures a hospital adopts to meet its EMTALA obligation are at the hospital's discretion, so long as they meet the needs of the patients who present for emergency care.

6.Q. Can physician groups be listed on the on-call list?

6.A. Title 42 C.F.R. 489.20 (r)(2) requires "a list of physicians who are on call for duty after the initial examination…" therefore; physician group names (i.e., The Kaiser Foundation) are not acceptable for identifying the on-call physician. Individual physician names are to be identified on the list.

7.Q. Can a physician schedule elective surgery while being on-call?

7.A. Except in the case of Critical Access Hospitals (see 42 CFR 413.70), CMS has not issued any rule or interpretative guidelines that prohibit a physician from performing surgery while on-call. A hospital may have such a policy to prohibit elective surgery by on-call physicians to better serve the needs of its patients seeking treatment for a potential emergency medical condition; CMS recognizes that hospitals need to have flexibility in developing a method of providing coverage for such patients. Nevertheless, we would expect that if a physician has agreed to be on-call at a particular hospital during a particular period of time, but has also scheduled elective surgery during that time, that physician would have a planned back-up in the e

event that they are called while performing elective surgery. We anticipate that surveyors would recognize that physicians and hospitals need flexibility in developing a back-up plan that the back-up plan needs to be developed in the best interests of the community.

As in the case of simultaneous on-call, the requirements in the SOM regarding medical staff responsibilities while on-call and policies and procedures for times when an on-call physician cannot respond will continue.

This clarification will be added to the SOM, Appendix V the next time it is revised. Please share additional copies of this memorandum as necessary. If you have further questions, please contact Doris M. Jackson of my staff at (410) 786-0095.

/s/
Steven A. Pelovitz

cc: American Hospital Association
American Health Lawyers Association
American Federation of Lawyers
American Medical Association
American Osteopathic Association
American College of Surgeons
American Society of General Surgeons
American Association of Neurological Surgeons
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