

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-06-32

DATE: September 29, 2006

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Revisions to Special Responsibilities of Hospitals under the Emergency Medical Treatment and Labor Act (EMTALA)

Letter Summary

This letter announces changes in the regulations (Changes to Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates (CMS-1488-F)), Vol. 71, No. 160 Fed. Reg. pages 48143 and 48345 (Aug. 18, 2006) relative to 42 CFR §489.24, Special responsibilities of Medicare hospitals in emergency cases under EMTALA.

- The definition of “Labor” is revised to expand the types of health care practitioners who may certify false labor.
- The responsibilities of hospitals with specialized capabilities to accept transfers of patients are articulated.

Background:

The EMTALA Technical Advisory Group (TAG), after receiving public comments from representatives of the American College of Nurse-Midwives and the American College of Obstetricians and Gynecologists, recommended that the Centers for Medicare & Medicaid Services (CMS) amend the EMTALA regulations that allowed only physicians to certify that a pregnant woman experiencing contractions is in false labor. According to the TAG, the regulation precluded certified nurse mid-wives or other qualified medical personnel (QMP) from performing a task for which they are well-trained and competent to perform. Under the prior regulations at 42 CFR §489.24 (a), if a QMP other than a physician (e.g., a Registered Nurse, Physician Assistant etc.) determined that a woman was in false labor, a physician had to certify the diagnosis.

The EMTALA TAG also heard testimony from representatives of physician groups, hospital associations, and others who expressed concerns regarding EMTALA compliance by specialty hospitals that typically do not have a dedicated emergency department. In particular, questions were raised about the responsibility of such hospitals to accept transfers of individuals requiring their specialized services. The TAG recommended that CMS clarify its policy regarding the EMTALA obligations of these hospitals.

On April 25, 2006, CMS published the Hospital Inpatient Prospective Payment System (IPPS) Proposed Rule. In that rule (71 FR 24146 – 24147), CMS proposed to revise the EMTALA regulations to adopt the TAG recommendations. On August 18, 2006, CMS published the Hospital IPPS Final Rule that implemented two changes to the EMTALA regulations. The regulation changes below take effect October 1, 2006.

1. The definition of “Labor” was changed to expand the types of health care professionals who may certify false labor. It should be noted that health care professionals must be acting within their scope of practice when certifying false labor. The text of the revised definition follows:

§489.24 (b) Labor means the process of childbirth beginning with the latent or early phase of labor and continuing through the delivery of the placenta. A woman experiencing contractions is in true labor unless a physician, certified nurse-midwife, or other qualified medical person acting within his or her scope of practice as defined in hospital medical staff bylaws and State law, certifies that, after a reasonable time of observation, the woman is in false labor.

2. In addition, revised §489.24 (f) states that a hospital with specialized capabilities is required to accept appropriate transfers regardless of whether or not the recipient hospital has a dedicated emergency department. The text of the revised regulation follows:

§489.24 (f) Recipient hospital responsibilities. A participating hospital that has specialized capabilities or facilities (including, but not limited to, facilities such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers, which for purposes of this subpart, means hospitals meeting the requirements of referral centers found at § 412.96 of this chapter) 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. This requirement applies to any participating hospital with specialized capabilities, regardless of whether the hospital has a dedicated emergency department.

These changes will be incorporated into the SOM, Appendix V the next time it is revised.

For questions on this memo, please contact Donna Smith at (410) 786-3255 or by e-mail at Donna.Smith@cms.hhs.gov.

Effective Date: October 1, 2006.

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)