



CMS Issues Memorandum Discussing Options for Compliance with EMTALA During a Potential H1N1 Influenza Emergency

On August 14, 2009, the Center for Medicare and Medicaid Services ("CMS") issued a memorandum and fact sheet (the "Memorandum") to state survey agency directors summarizing the requirements and options under the Emergency Medical Treatment and Labor Act ("EMTALA") during a surge in demand for emergency services. EMTALA requires hospital emergency departments ("EDs") to perform a medical screening exam ("MSE") to determine whether a patient suffers from an emergency medical condition ("EMC") and, if an EMC exists, to stabilize the patient within the hospital's capacity and capabilities or, subject to certain conditions, transfer the patient to a hospital with the proper resources for the patient's care. The Memorandum was drafted "in anticipation of a possible significant increase in demand for emergency services" and provides instruction, clarification, and alternatives for hospitals if the H1N1 influenza or other disaster causes a surge in emergency room visits. To access the Memorandum,

The Memorandum provides three alternatives for hospitals faced with a significant increase in demand for emergency services due to a pandemic or other declared disaster. First, hospitals may establish alternative locations on the hospital campus for conducting initial MSEs. Patients should be logged in by qualified staff before being redirected to alternative on-campus locations to receive the MSE. Regardless of the patient's redirection to an alternative on-campus location, the MSE must still be conducted by a qualified member of the medical staff as determined by hospital bylaws.

Second, hospitals and community officials may establish and promote off-campus hospital-controlled sites for individuals with influenza-like illnesses ("ILI"). The off-campus site should not be advertised as a place providing care for EMCs, but rather as an ILI screening center. Unlike on-campus MSE centers, hospitals are not permitted to redirect a patient to an off-campus location after the patient arrives at the ED. The ILI screening center must be staffed with medical personnel trained to evaluate individuals with ILIs and the hospital must provide pre-arranged transportation through emergency medical services ("EMS") for patients needing additional medical attention. EMTALA requirements do not apply to the off-campus ILI screening center unless it is also a dedicated ED.

Third, communities may establish ILI screening clinics at sites not under the control of a hospital without incurring EMTALA obligations. The hospital and the community may direct the public to these clinics, but similar to the ILI hospital-controlled off-campus screening centers, hospitals may not redirect individuals directly from the ED to the community-based ILI screening clinic. Medical staff at such clinics should be trained to evaluate individuals with ILIs, and EMS services should be available for patients needing additional medical attention.

During a declared public health emergency, EMTALA requirements may be waived allowing hospitals to relocate individuals from EDs to off-campus sites for the MSEs and allowing patient transfers normally prohibited under EMTALA. CMS Regional Offices and/or state survey agencies will notify hospitals if a public health emergency is declared.

Court Holds that EMTALA Does Not Apply to Outpatients

On September 2, 2009, the U.S. Court of Appeals for the Third Circuit affirmed that the Emergency Medical Treatment and Active Labor Act ("EMTALA") does not apply to outpatients who present at a hospital for a scheduled appointment. EMTALA requires hospital emergency departments ("EDs") to perform a medical screening exam ("MSE") to determine whether a patient suffers from an emergency medical condition ("EMC"). If an EMC exists, the patient must be stabilized within the hospital's capacity and capabilities or, subject to certain conditions, transferred to a hospital with the proper resources to treat the patient.

The Lawsuit

The plaintiff ("Plaintiff") was an insulin-dependant diabetic who was pregnant for the second time. Her obstetrician referred her to the Paoli Hospital Perinatal Testing Center ("Testing Center"), which provided routine outpatient fetal monitoring for women with high risk pregnancies. During Plaintiff's appointment at the Testing Center on May 25, 2005, she reported that she was feeling general discomfort and that she had recently expressed concern to her obstetrician about discomfort in her abdomen and decreased fetal movement. Plaintiff was not alarmed about her condition and did not feel like she was in an emergent state. The Testing Center physician ordered a non-stress test that indicated that she was having contractions. Based on the preliminary results of the test and Plaintiff's diabetic condition, the physician directed Plaintiff to Lankenau Hospital for long-term monitoring of the fetus. The physician did not know that plaintiff's condition was emergent or that the delivery of the baby would be imminent.

Shortly after Plaintiff's arrival at Lankenau Hospital, her condition deteriorated rapidly. She was rushed to surgery for a caesarean section and the baby was born with severe brain damage. Plaintiff argued that EMTALA was violated because she presented to the Testing Center for a potential EMC and that the Testing Center transferred her to a different hospital without properly stabilizing her.

The Ruling

The court ruled that EMTALA did not apply to hospital outpatients even if, during an outpatient encounter, they are found to have an EMC. EMTALA requirements are triggered when an individual "comes to the emergency department." An individual only comes to the emergency department if that person is not already a patient. Plaintiff was already a patient of the Testing Center, so the court held that she did not "come to the emergency department" under EMTALA. The court also disagreed with Plaintiff's argument that her high-risk pregnancy should qualify as an EMC that triggered EMTALA. To establish a claim under EMTALA, the health care practitioner who is providing care to a patient must have knowledge that such patient is experiencing an EMC. In this case, neither Plaintiff nor the medical staff at the Testing Center had actual knowledge that Plaintiff was in an emergent state prior to Plaintiff's transfer to Lankenau Hospital. As such, it was no basis for an EMTALA claim.

If you have any questions about complying with EMTALA, please contact any member of the Robinson & Cole Health Law Group.

Robinson & Cole's Health Law Group includes:

[Lisa M. Boyle](#)

[Theodore J. Tucci](#)

[Michael J. Kolosky](#)

[Karen P. Conway](#)

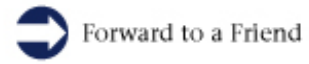
[B. Moses Vargas](#)

[Brian D. Nichols](#)

Susan E. Roberts

Kimberly E. Troland

The information in this update should not be considered legal advice. Consult your attorney before acting on anything contained n.



©2009 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson & Cole LLP and you.

This email was sent to: archive@rc.com

This email was sent by: Robinson & Cole LLP
280 Trumbull Street Hartford, CT 06103 Attn: Business Development and Marketing



We respect your right to privacy - [view our policy](#)

||