DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Service
7500 Security Boulevard, Mail Stop S2-12-25
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Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-09-52

DATE: August 14, 2009

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: **Emergency Medical Treatment and Labor Act (EMTALA) Requirements and Options for Hospitals in a Disaster**

Memorandum Summary

- **Planning for Surge in Emergency Department Services:** A brief summary of EMTALA requirements and options for hospitals experiencing an extraordinary surge in demand for ED services has been developed to assist hospitals and their communities in planning for a potential surge in ED volume this fall related to H1N1 influenza.
- **Waiver Description:** Rules governing EMTALA waivers are also described.
- **Availability and Distribution of Summary Sheet:** State Survey Agencies (SAs) are requested to distribute this summary sheet widely to hospital and emergency response planning officials.

In anticipation of a possible significant increase in demand for emergency services due to H1N1 influenza resurgence this fall several Federal agencies, State health departments, and hospitals have expressed significant concerns about compliance with EMTALA requirements during an outbreak. Many stakeholders perceive that EMTALA imposes significant restrictions on hospitals' ability to provide adequate care when EDs experience extraordinary surges in demand. The attached fact sheet clarifies options that are permissible under EMTALA and should reassure the provider community and public health officials that there is existing flexibility under EMTALA. Among other things, the fact sheet notes that an EMTALA-mandated medical screening examination (MSE) does not need to be an extensive work-up in every case, and that the MSE may take place outside the ED, at other sites on the hospital's campus.

The fact sheet also summarizes the provisions governing EMTALA waivers. Surveyors and managers responsible for EMTALA enforcement are expected to be aware of the flexibilities hospitals are currently afforded under EMTALA and to assess incoming EMTALA complaints accordingly in determining whether an on-site investigation is required. They are also expected to keep these flexibilities in mind when assessing hospital compliance with EMTALA during a survey.

To help dispel misconceptions among the provider community concerning EMTALA requirements, SAs are requested to distribute the attached fact sheet widely to the provider community in their State, as well as to State and local public health officials responsible for emergency preparedness.

Questions about this document should be addressed to CDR Frances Jensen, M.D., at frances.jensen@cms.hhs.gov.

Training: The information contained in this letter should be shared with all survey and certification staff, their managers, and the State/RO training coordinators immediately

/s/
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management

Attachment

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FACT SHEET

Emergency Medical Treatment and Labor Act (EMTALA) & Surges in Demand for Emergency Department (ED) Services During a Pandemic

I. What is EMTALA?

- EMTALA is a Federal law that requires all Medicare-participating hospitals with dedicated EDs to perform the following for **all** individuals who come to their EDs, regardless of their ability to pay:
  - An *appropriate* medical screening exam (MSE) to determine if the individual has an Emergency Medical Condition (EMC). If there is no EMC, the hospital's EMTALA obligations end.
  - If there is an EMC, the hospital must:
    + Treat and stabilize the EMC within its capability (including inpatient admission when necessary); ***OR***
    + Transfer the individual to a hospital that has the capability and capacity to stabilize the EMC.
- Hospitals with specialized capabilities (with or without an ED) may not refuse an appropriate transfer under EMTALA if they have the capacity to treat the transferred individual.
- EMTALA ensures access to hospital emergency services; it need not be a barrier to providing care in a disaster.

II. Options for Managing Extraordinary ED Surges Under Existing EMTALA Requirements (No Waiver Required)

A. Hospitals may set up alternative screening sites on campus

- The MSE does not have to take place in the ED. A hospital may set up alternative sites on its campus to perform MSEs.
  - Individuals may be redirected to these sites after being logged in. The redirection and logging can even take place outside the entrance to the ED.
  - The person doing the directing should be qualified (e.g., an RN) to recognize individuals who are obviously in need of immediate treatment in the ED.
- The content of the MSE varies according to the individual's presenting signs and symptoms. It can be as simple or as complex, as needed, to determine if an EMC exists.
- MSEs must be conducted by qualified personnel, which may include physicians, nurse practitioners, physician's assistants, or RNs trained to perform MSEs and acting within the scope of their State Practice Act.
- The hospital must provide stabilizing treatment (or appropriate transfer) to individuals found to have an EMC, including moving them as needed from the alternative site to another on-campus department.

B. Hospitals may set up screening at off-campus, hospital-controlled sites.

- Hospitals and community officials may encourage the public to go to these sites instead of the hospital for screening for influenza-like illness (ILI). *However, a hospital may not tell individuals who have already come to its ED to go to the off-site location for the MSE.*

- Unless the off-campus site is already a dedicated ED (DED) of the hospital, as defined under EMTALA regulations, EMTALA requirements do not apply.
- The hospital should not hold the site out to the public as a place that provides care for EMCs in general on an urgent, unscheduled basis. They can hold it out as an ILI screening center.
- The off-campus site should be staffed with medical personnel trained to evaluate individuals with ILIs.
- If an individual needs additional medical attention on an emergent basis, the hospital is required, under the Medicare Conditions of Participation, to arrange referral/transfer. Prior coordination with local emergency medical services (EMS) is advised to develop transport arrangements.

C. *Communities may set up screening clinics at sites not under the control of a hospital*

- There is no EMTALA obligation at these sites.
- Hospitals and community officials may encourage the public to go to these sites instead of the hospital for screening for ILI. *However, a hospital may not tell individuals who have already come to its ED to go to the off-site location for the MSE.*
- Communities are encouraged to staff the sites with medical personnel trained to evaluate individuals with ILIs.
- In preparation for a pandemic, the community, its local hospitals and EMS are encouraged to plan for referral and transport of individuals needing additional medical attention on an emergent basis.

III. EMTALA Waivers

- An EMTALA waiver allows hospitals to:
  - Direct or relocate individuals who come to the ED to an alternative off-campus site, in accordance with a State emergency or pandemic preparedness plan, for the MSE.
  - Effect transfers normally prohibited under EMTALA of individuals with unstable EMCs, so long as the transfer is necessitated by the circumstances of the declared emergency.
- By law, the EMTALA MSE and stabilization requirements can be waived for a hospital **only if:**
  - The President has declared an emergency or disaster under the Stafford Act or the National Emergencies Act ; ***and***
  - The Secretary of HHS has declared a Public Health Emergency; ***and***
  - The Secretary invokes her/his waiver authority (which may be retroactive), including notifying Congress at least 48 hours in advance; ***and***
  - The waiver includes waiver of EMTALA requirements and the hospital is covered by the waiver.
- CMS will provide notice of an EMTALA waiver to covered hospitals through its Regional Offices and/or State Survey Agencies.
- Duration of an EMTALA waiver:
  - In the case of a public health emergency involving pandemic infectious disease, until the termination of the declaration of the public health emergency; ***otherwise***
  - In all other cases, 72 hours after the hospital has activated its disaster plan
  - In no case does an EMTALA waiver start before the waiver's effective date, which is usually the effective date of the public health emergency declaration.