Medicare: Today's Issue
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BETTER BENEFITS – MORE CHOICES

Good News about the Medicare Prescription Drug, Improvement and Modernization Act of 2003!

Emergency Medical Treatment and Labor Act (EMTALA) New Statutory Provisions and CMS' Final Regulation

Background:

The Emergency Medical Treatment and Labor Act (EMTALA) (Section 1867 of the Social Security Act, also known as the "Patient Anti-Dumping Act") applies to all hospitals that participate in Medicare and offer emergency services. EMTALA requires such hospitals to provide an appropriate medical screening examination to any person who comes to the hospital emergency department and requests treatment or examination for a medical condition. If the examination reveals an emergency medical condition, the hospital must provide whatever treatment is necessary to stabilize that condition or an appropriate transfer to another medical facility. EMTALA protections apply to all persons that come to the hospital seeking medical care (not just Medicare beneficiaries), including women in labor.

Hospitals and physicians found to have violated EMTALA are subject to termination from Medicare as well as civil monetary penalties. In some cases, patients or other hospitals may also file private lawsuits against hospitals for EMTALA violations.

In the case of services for Medicare beneficiaries: Medicare managed care plans must pay for an EMTALA-mandated screening exam if a "prudent layperson" would reasonably believe immediate medical attention was necessary. Fee-for-service (FFS) Medicare covers items and services that are reasonable and necessary for the diagnosis or treatment of an illness or injury, including emergency services; however prior law does not otherwise specifically address FFS coverage of EMTALA-related services.

Prior law requires review by a peer review organization (now called quality improvement organizations) before imposition of civil monetary penalties for certain EMTALA violations.

New Provisions in the Medicare Modernization Act (MMA):

- The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requires that Medicare medical necessity determinations for EMTALA-mandated services be based on information (including the patient's presenting symptoms or complaint) available at the time the item or service was ordered or furnished (not on the patient's principal diagnosis). Such determinations shall not consider the frequency with which the item or service was provided before or after the time of the emergency admission or visit. This provision is effective January 1, 2004.

- The MMA requires the Secretary to establish a procedure for notifying hospitals and physicians when an EMTALA investigation is closed, and to request review by a peer review organization before making a compliance determination that could lead to termination of a hospital's Medicare participation for EMTALA violations related to the appropriateness of a screening exam, stabilizing treatment, or an appropriate transfer.

- ❖ The MMA also establishes a 19-member technical advisory group to review EMTALA regulations; provide advice and recommendations to the Secretary regarding those regulations; solicit comments and recommendations regarding the implementation of regulations; and disseminate information regarding the application of such regulations.

CMS' Final Regulation on EMTALA:

On September 9, 2003, the Centers for Medicare & Medicaid Services (CMS) published a final regulation clarifying hospital obligations under EMTALA. That final rule (effective November 10, 2003) included the following requirements:

- ➢ Dedicated Emergency Department (ED): Hospitals must provide an appropriate medical screening examination to all persons who present themselves to an area of the hospital meeting the definition of a dedicated emergency department (whether on or off the hospital's main campus), and who request, or have a request made on their behalf for, examination or treatment of a medical condition.

  A dedicated ED is defined as an entity that: (1) is licensed by the State as an emergency department; (2) holds itself out to the public as providing emergency care; or (3) during the preceding calendar year, provided at least one-third of its outpatient visits for the treatment of emergency medical conditions.

- ➢ Other on-campus locations: Persons (including visitors) presenting at an area on the hospital's main campus other than a dedicated ED must receive a medical screening exam only if they request, or have a request made on their behalf for, examination or treatment for what may be an emergency medical condition. Where there is no verbal request, a request will be considered to exist if a "prudent layperson" observer would conclude, based on the person's appearance or behavior, that the person needed emergency examination or treatment.

  However, hospitals have no EMTALA obligation towards an individual who has begun to receive services as part of a scheduled outpatient encounter and subsequently experiences a medical emergency. Such individuals are protected by the Medicare Conditions of Participation (COPs) for hospitals.

- ➢ Other off-campus locations: If a request is made for emergency care in a hospital department off the hospital's main campus other than a dedicated ED, EMTALA also does not apply. The off-campus facility should call the local emergency medical service (EMS) to take the individual to the closest ED (not necessarily in the hospital that operates the off-campus department), and should provide whatever assistance is within its capability. Thus, an off-campus location that is not a dedicated ED is not required to be staffed to handle emergency medical conditions. However, Medicare COPs require such departments to have written policies and procedures for appraisal of emergencies and referrals when appropriate.

- ➢ Inpatient Admissions: A hospital's EMTALA obligation ends when an individual is admitted for inpatient services, whether or not the individual has been stabilized. At that point, the patient is protected by the Medicare COPs. (A patient is considered "admitted" for inpatient services when it is expected that he or she will remain in the hospital at least overnight).

- Hospital-Owned Ambulances: The final rule clarifies the responsibilities of hospital-owned ambulances to more fully integrate them with citywide and local EMS procedures for efficiently responding to medical emergencies. Previously, if an individual was in an ambulance owned and operated by a hospital, that hospital had an EMTALA obligation to provide a medical screening examination and possible stabilizing treatment to the individual. Under the final rule, if a hospital-owned ambulance transports a patient to a hospital other than its "parent" hospital pursuant to a community-wide EMS protocol, the hospital that owns the ambulance has no EMTALA obligation.

- On-Call Lists: Hospitals must maintain an "on-call" list of physicians available to see patients in a dedicated ED, in a manner that best meets the needs of the hospital's patients, taking into account the services offered by the hospital and the on-call availability of specialty physicians. Although physicians are not required to take calls 24/7, hospitals are expected to work with their medical staffs to develop an appropriate on-call schedule. Physicians may be on call simultaneously at more than one hospital, and may schedule elective surgery or other medical procedures during on-call times, as long as the hospital provides an appropriate back up plan. These provisions do not reflect any change in policy; they are merely intended to clarify CMS' approach to on-call requirements under EMTALA. The rule also clarifies that if a hospital does not have an appropriate specialist on call, it may transfer the patient to another facility if the medical benefits of such transfer outweigh the risks.