

EMTALA Update



Thomas R. Barker, Esq.
Centers for Medicare and Medicaid
Services

Overview



- Setting the stage
- What we heard
- What we proposed
- Next steps

Setting the stage

- EMTALA reform a high priority
- We can't change the law, but we can change the regulations and the interpretive guidance
- EMTALA is the closest thing we have to universal health coverage, and we aren't going to weaken existing patient protections

Setting the Stage



- EMTALA needs to be looked at from a “real-world” perspective and our regulations have to be guided by common sense.

What we Heard

- Clarify where EMTALA applies
- Clarify when EMTALA applies
- Clarify “on-call” requirements
- EMTALA and hospital-owned ambulances
- Clarify prior guidance
- Bioterrorism
- EMTALA and psychiatric patients

How we Responded

- Where EMTALA applies
 - Patients who “come to the emergency department”
 - Patients who “come to the hospital” but not through the emergency department
 - Patients who come to an off-campus entity on the hospital’s license

How we Responded

- Where EMTALA applies (cont'd.)
 - Patients who come through the ED
 - Existing EMTALA applies: screening, stabilization
 - Clarification on minor visits (e.g., suture removal)

How we Responded

- Where EMTALA applies (cont'd.)
 - Patients who come elsewhere in the hospital
 - Most patients protected by existing CoPs
 - EMTALA applies to the extent a “prudent layperson” would believe patient was suffering a medical emergency
 - No EMTALA obligation in non-hospital-owned property

How we Responded

- Where EMTALA applies (cont'd.)
 - Patients who come to off-campus entities
 - EMTALA only applies if entity holds itself out as offering emergency services
 - Use of local EMS protocols to transport patient to nearest hospital is appropriate

How we Responded

- Scope of EMTALA: does it apply to inpatients?
 - Patient admitted through emergency department
 - Patient admitted through normal admissions process

How We Responded

- Scope of EMTALA (cont'd.)
 - Admissions through ED
 - If patient is stable, EMTALA obligations end
 - If patient is unstable, EMTALA still applies
 - Admissions through normal process
 - Existing CoPs protect patients

How We Responded

- Clarification of on-call
 - Re-iteration of requirements of § 1866(a)(1)(I)(iii)
 - Clarification that there is no “Rule of 3”
 - Basic, common-sense rule: a hospital does not have “capability” to treat a medical emergency if there is no specialist available to see a patient

How We Responded

- EMTALA and hospital-owned ambulances
 - Hospitals can comply with local EMS protocols to more efficiently manage patient load
 - At this time, no comment on *Arrington v. Wong*

How We Responded



- Re-iteration of prior guidance
 - HCFA/OIG Advisory Bulletin on EMTALA and managed care codified

How We Responded



- Bioterrorism
 - November guidance
 - Nothing further in regulations
- Psychiatric patients
 - Nothing specific in regulations
 - Outstanding issues

Next Steps

- APA comment period expires July 8, 2002
- Regulation to be finalized August 1, 2002
- Effective October 1, 2002
- Re-training of state surveyors and regional offices
- Ongoing process