

CMS Says Specialty Hospitals Participating In Medicare Must Meeting Emergency Care Conditions of Participation

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Specialty hospitals participating in Medicare, like most other Medicare-participating hospitals,¹ must have "appropriate policies and procedures in place for addressing individuals' emergency care needs 24 hours per day and 7 days per week" in order to fulfill their Medicare Conditions of Participation (CoPs) whether or not they have emergency departments, according to recent guidance issued by the Centers For Medicare & Medicaid Services (CMS). Specialty hospitals, specialty hospital investors and physicians performing procedures at such facilities should confirm the adequacy of the emergency procedures at these facilities in light of this new guidance.

CMS' position that the Medicare law requires Medicare participating specialty hospitals to have appropriate emergency care policies and procedures in place is documented in a CMS memorandum regarding "Provision of Emergency Services—Important Requirements for Hospitals" (the "ER Memo"). A copy of the ER Memo is available for review along with other health care materials under the "Law Links" at cynthiastamer.com.

In the April 23, 2007 ER Memo issued to state survey and certification authorities, CMS clarifies that all Medicare participating hospitals—including specialty hospitals but not "critical access hospitals"— are required to have appropriate policies and procedures to address emergency care needs of patients at all times. The ER Memo also details various minimum emergency care standards for providing for such critical emergency care set forth under existing regulations applicable to Medicare participating specialty and other hospitals required to provide emergency care.

The ER Memo directly rejects certain claims about the emergency care responsibilities of specialty hospitals that certain promoters of specialty hospitals have espoused in presenting specialty hospitals as more advantageous than traditional hospitals as sites of service for physicians to render care and as desirable investments. According to the ER Memo:

- "All hospitals are required to appraise medical emergencies, provide initial treatment and referral when appropriate;" and
- The obligation to provide the critical emergency services set forth in the ER Memo applies "regardless of whether the hospital has an emergency department. "

The ER Memo also states that a specialty or other hospital cannot rely on 9-1-1 services to provide appraisal or initial treatment as a substitute for the hospital's own ability to provide services as a means of fulfilling the emergency care CoP.

According to the ER Memo, to meet the emergency care CoP requirement, each Medicare participating hospital – including Medicare participating specialty hospitals - generally must provide a foundation for safe care for all persons, including those with emergency care needs. Furthermore, each such facility also must meet each of the following conditions:

- Have a physician on call or on duty at all times;
- Have a responsible physician for each patient with respect to any medical or psychiatric problem that is present on admission or that develops during the hospitalization;
- Provide 24-hour nursing services furnished by or supervised by an RN, that an RN supervise and evaluate the care of each patient, and that an RN be immediately available, when needed, to provide bedside care to any patient;
- Honor each patient's right to receive care in a safe setting;
- Ensure that the medical staff is accountable to the governing body for the quality of care provided to patients;
- Ensure that its medical staff is well organized and accountable to the governing body for the quality of care provided to patients;
- Ensure that the hospital's governing body, medical staff, and administrative officials are responsible and accountable for ensuring that clear expectations for safety are established and that adequate resources are allocated for reducing risk to patients; and
- Where a hospital either does not have an emergency room in the facility or has off-campus hospital locations without emergency department in addition to its emergency department, must assure that the medical staff has written policies and procedures for appraisal of emergencies, initial treatment, and referral when appropriate.

The ER Memo also discusses some of the elements that CMS expects that specialty and other hospitals without emergency rooms must meet to fulfill their obligation to provide for emergency appraisal, initial treatment and referral.

To meet the appraisal condition, for instance, the ER Memo requires that hospital medical staff policies and procedures for conducting appraisals of persons with emergencies:

- Take into account all of the other CoP requirements mentioned above;

¹ *Critical Access Hospitals (CAHs) are governed by regulations separate from those governing hospitals, which may be found at 42 CFR 485.618. Certain rural hospitals that have been granted waivers also may be subject to special rules.*

- Ensure that an RN qualified to conduct an assessment to assess and recognize that a person has a need for emergency care and provide bedside care is immediately available at all times, as needed, for an patient; and
- Provide that the MD/DO (on-site or on call) would directly provide appraisals of emergencies or provide medical direction of onsite staff conducting appraisals.

According to the ER Memo, the initial treatment condition requires that the hospital have medical staff policies and procedures for providing the initial treatment needed by persons with emergency conditions. Among the RN(s) who must be available at all times in a hospital, there must be RN(s) who are qualified, through a combination of education, licensure, and training, to provide initial treatment to a person experiencing a medical emergency. The on-site or on-call physician could provide initial treatment directly or provide medical oversight and direction to other staff. According to the ER Memo, this requirement, taken together with the other regulatory requirements described above, suggests that a prudent hospital would evaluate the patient population the hospital routinely cares for in order to anticipate potential emergency care scenarios and develop the policies, procedures, and staffing that would enable it to provide safe and adequate initial treatment of an emergency.

The ER Memo also states to meet the referral condition, a hospital must have medical staff policies and procedures to address situations in which a person's emergency needs may exceed the hospital's capabilities. These policies and procedures should be designed to enable hospital staff members who respond to emergencies to:

- Recognize when a person requires a referral or transfer;
- Assure appropriate handling of the transfer, including arrangement for appropriate transport of the patient;
- Transfer patients to appropriate facilities, i.e., those with the appropriate capabilities to handle the patient's condition along with any medical information necessary to enable the receiving hospital to treat the medical emergency more efficiently.

Acknowledging that the hospital CoPs do not include a definition of a medical emergency, the ER Memo suggests that the definition of "emergency"² contained in the Emergency Medical Treatment and Labor Act (EMTALA) statute and regulations "might be a helpful reference when considering a hospital's compliance with the regulatory requirements for emergency services."

We hope this information is helpful to you. If you have questions about the implications of this new guidance as it relates to you or a specific situation, or other health care questions or concerns, please contact: Cynthia Marcotte Stamer, P.C., Member, Glast, Phillips & Murray, P.C., 2200 One Galleria Tower, 13355 Noel Road, LB 48, and Dallas, Texas 75240. Telephone (972) 419-7188. E-mail cstamer@gpm-law.com. For other helpful resources and information, go to CynthiaStamer.com or contact Ms. Stamer. If you or someone else you know would like to receive future Alerts or announcements about other developments, publications or programs, please be sure that we have your current contact information – including your preferred e-mail – by registering on our website at cynthiastamer.com or by providing that information to us via telephone, fax or e-mail using the above contact information.

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² 42 CFR 489.24(b) Definitions

"Emergency medical condition means –

"(1) A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances and/or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in—

(i) Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(ii) Serious impairment to bodily functions; or

(iii) Serious dysfunction of any bodily organ or part; or

"(2) With respect to a pregnant woman who is having contractions

(i) That there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) That transfer may pose a threat to the health or safety of the woman or the unborn child."

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