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## CMS Issues EMTALA Requirements And Guidance To Hospitals In Anticipation Of H1N1 Resurgence And Disaster/Pandemic Situations

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CMS has released guidance regarding Emergency Medical Treatment and Labor Act (EMTALA) requirements and options during disasters and pandemics. This guidance comes in anticipation of an increasing number of cases of the H1N1 influenza this fall. CMS has also suggested that hospitals and community officials may encourage the public to go to alternative sites (as may be defined in a state's emergency disaster or preparedness plan) instead of the hospital for screening for Influenza-Like Illness (ILI).

Concerns have been expressed regarding how hospitals should handle an expected surge in demand for emergency department (ED) services, and how patient care will be impacted by restrictions under EMTALA. CMS issued a transmittal (S&C-09-52) that is meant to clarify "options that are permissible under EMTALA and should reassure the provider community and public health officials that there is existing flexibility under EMTALA." CMS further states that "EMTALA ensures access to hospital emergency services; it need not be a barrier to providing care in a disaster." This includes hospitals with or without an ED (including Specialty Hospitals).

It is important to comply with all EMTALA requirements if *any* individual presents to a hospital's ED. This includes performing an appropriate Medical Screening Examination (MSE) to determine whether the individual has an Emergency Medical Condition (EMC) without regard to the individual's ability to pay. If an individual has an EMC, the hospital must treat and stabilize the EMC within its capacity and capability or arrange for an appropriate transfer of the individual to a hospital that has the capacity and capability to stabilize the individual.

CMS has outlined options for hospitals in order to manage extraordinary increases in ED visits under existing EMTALA requirements as well as the rules governing potential EMTALA waivers.

*Hospitals Have the Following Options to Aid in Disasters or Pandemics:*

### **I. On-Campus: Hospitals May Set Up Alternative MSE Sites.**

- The MSE does not have to take place in the ED.
- The content of an MSE varies according to symptoms. It can be simple or complex, as needed to determine if an EMC exists.
- MSEs can be performed by Qualified Medical Personnel (QMP) including physicians, nurse practitioners, physician assistants, or RNs trained to perform MSEs and acting within the scope of their State Practice Act. Note: The QMPs must be designated in the hospital's By-laws or Rules and Regulations.
- Individuals, after being logged in, may be redirected to a hospital designated alternative site for further evaluation and/or treatment. CMS states that the logging in and redirection can take place outside the entrance to the ED.
- 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.

### **II. Off-Campus: Hospitals May Set Up Screenings at Off-Campus, Hospital-Controlled Sites.**

- The public may be encouraged to visit these sites instead of a hospital for ILI screenings. *However, hospitals may not tell individuals who have already come to its ED to go to the off-site location for the MSE.*
- The hospital should not hold out to the public that an alternative site is a place where medical emergencies (*i.e.*, EMCs) can be treated on an urgent, unscheduled basis.
- The hospital should indicate those alternative sites as Screening Sites for ILIs.
- Unless the off-campus site is already a dedicated ED of the hospital, EMTALA regulations do not apply.
- The off-campus site should be staffed with medical personnel trained to evaluate individuals with ILIs.
- If the individual needs additional medical attention on an emergent basis, the hospital is required to arrange the referral/transfer of the individual.
- Prior coordination with EMS is advised to develop appropriate transportation arrangements.

### **III. Communities May Set Up Screening Clinics at Sites not Under the Control of a Hospital.**

- There is no EMTALA obligation at these sites.
- Hospitals may encourage the public to go to these sites instead of the hospital for ILI screening (unless they have already come to the ED for a screening).
- Communities are encouraged to staff sites with medical personnel trained to evaluate individuals with possible ILIs.

- In preparation for a pandemic, communities, hospitals and EMS are encouraged to plan for the referral and transport of individuals requiring additional, emergent medical attention.

#### **IV. EMTALA Waivers.**

Under current law, the MSE and stabilization, pursuant to EMTALA requirements, can be waived for a hospital only if:

- The President has declared an emergency or disaster under the Stafford Act or National Emergencies Act; and
- The Secretary of HHS has declared a Public Health Emergency; and
- The Secretary invokes his/her waiver authority; and
- The waiver includes waiver of EMTALA requirements and the hospital is covered by the waiver.

An EMTALA Waiver Allows Hospitals to:

- Direct/relocate individuals who come to the hospital's ED to alternative off-campus site for the MSE in accordance with a state emergency or pandemic preparedness plan.
- Effect transfers normally prohibited under EMTALA of individuals with unstable EMCs, as long as transfer is necessitated by circumstances of the declared emergency.

Covered hospitals will be notified of an EMTALA waiver by CMS through its Regional Offices and/or State Survey Agencies.

Regarding duration of an EMTALA waiver (in the case of a public health emergency involving pandemic infectious disease), the waiver lasts until the termination of the declaration of the public health emergency. Otherwise, in all cases, the waiver remains in place until 72 hours after the hospital has activated its disaster plan. An EMTALA waiver never begins before the waiver's effective date, which is usually the effective date of the emergency declaration.

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