EMTALA obligations when the hospital owns & operates the ground or air ambulance

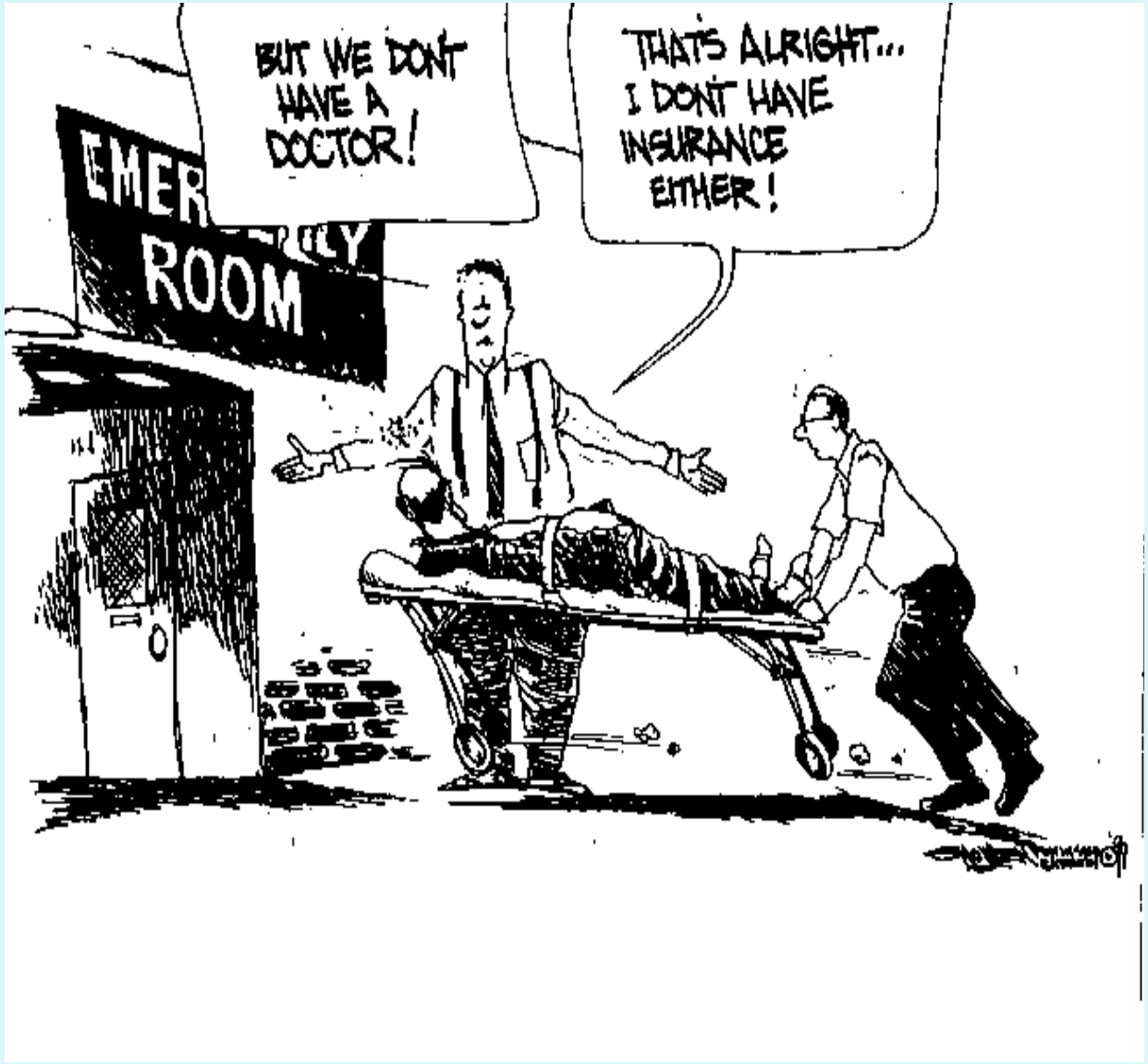
JOYCE DANNER, RN, MSN
HEALTH QUALITY REVIEW SPECIALIST
CMS KANSAS CITY REGIONAL OFFICE
(816) 426-6469
JOYCE.DANNER@CMS.HHS.GOV

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

History of EMTALA

- Public law 99-272 added the anti-dumping provisions to sections 1866 & 1867 of the Social Security Act
  - Ensures that individuals with emergency medical conditions are not denied essential lifesaving services.
- 1989 PL 101-239 further refined
  - Hospitals maintain a physician call list, may not delay or predicate treatment on ability to pay.
- 2003 PL 108-173 further refined
  - Requires CMS to obtain a medical opinion prior to fines or excluding a hospital from the Medicare & Medicaid program.
- Deficit Reduction Act 2005
  - Clarified EMTALA requirements to state that, even if a hospital does not have an emergency department , they must nonetheless accept transfers of cases when they have the capacity to provide appropriate care.
  - The full text of the statute can be found in any public library's reference section under 42 U.S.C.A. Section 1395dd et seq.
  - The regulation can be found at http://www.ssa.gov/OP_Home/ssact/title18/1867.htm

EMTALA was enacted in response to the practice of some hospitals refusing to see or transferring the poor and uninsured.



Hospital property – what we mean

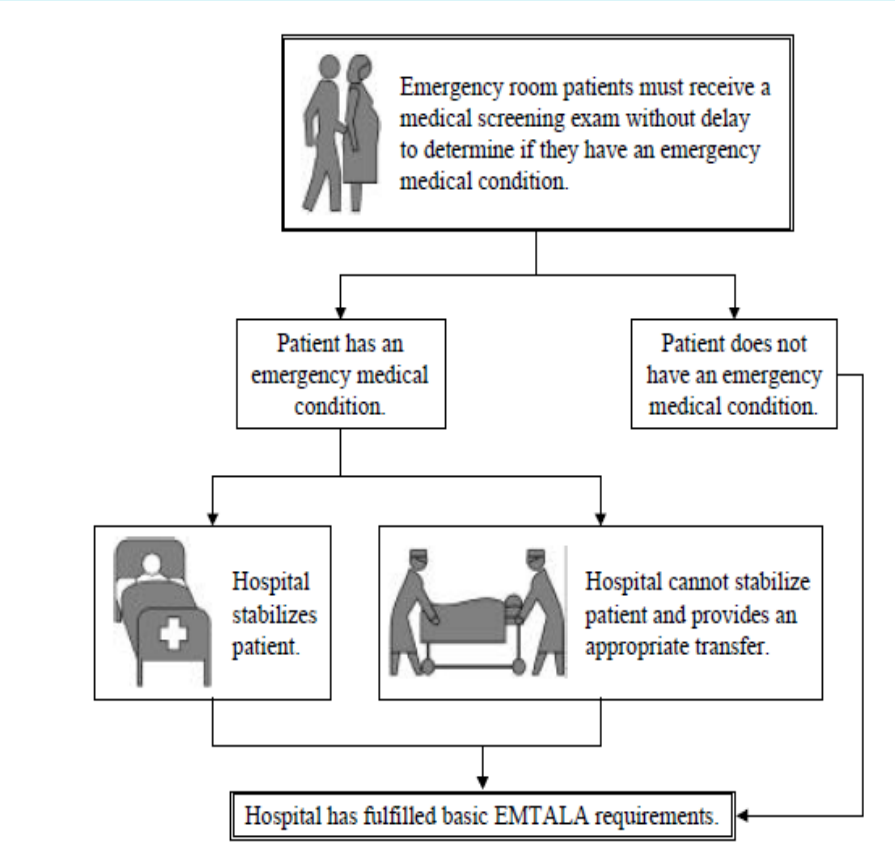
- Includes the entire main hospital campus as defined in § 413.65(b).
  - This means the parking lot, driveway, sidewalks, outpatient labs and clinics, cafeteria, public restrooms , the ED waiting room, and hospital owned & operated ambulances.
  - Any site within 250 yards of a principal building on the hospital campus, excluding non-medical facilities, such as banks, shops or restaurants.

- Specifically excluded from the definition of hospital property are areas and structures not considered part of the hospital, such as physicians' offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare or restaurants, shops, or other nonmedical facilities.

Basic EMTALA requirements

The specific requirements of EMTALA are incorporated in each hospital's Medicare provider agreement.

The hospital is obligated to provide these services regardless of the individual's ability to pay & without delay to inquire about the individual's method of payment or insurance status.



A hospital must accept the transfer of an individual w/an unstable emergency if it has the specialized capabilities necessary to treat the emergency.

Comes to the DED – what we mean

- Individual comes to the DED and requests examination or treatment of a medical condition, or has a request made on his/her behalf;
- Individual comes to the hospital and requests care for an emergency (higher request threshold), or a prudent layperson would believe the individual had an emergency;
- Individual comes to the DED by ambulance

Comes to the emergency department means,

(3) The individual is in a ground or air ambulance owned and operated by the hospital … even if the ambulance is not on hospital grounds.

<u>However</u>, an individual in an ambulance owned and operated by the hospital is not considered to have "come to the hospital's emergency department" if—

§ 489.24 (b) *Definitions*

Implications for EMS & pre-hospital care

(i) the ambulance is operated under communitywide emergency medical service (EMS) protocols that direct transport to a hospital other than the hospital that owns the ambulance; for example, to the closest appropriate facility.

In this case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property;

Implications (continued)

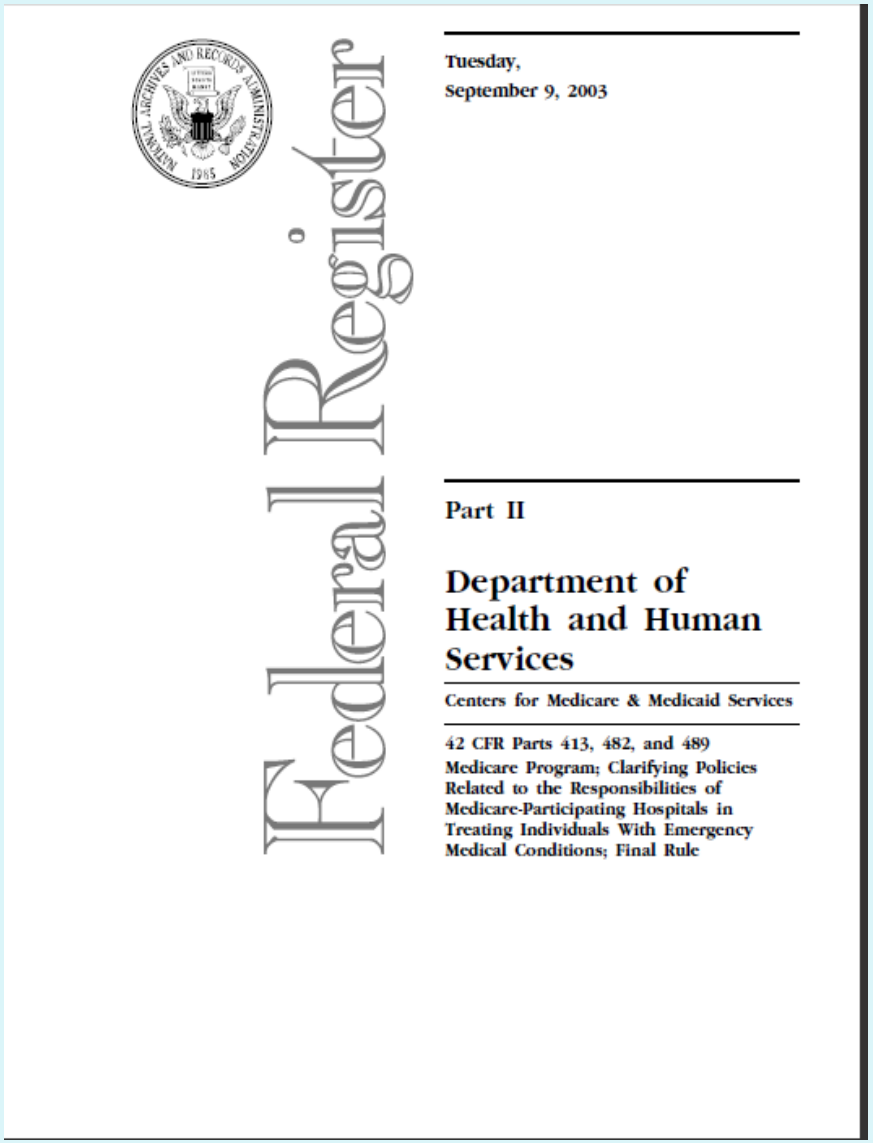
(ii) The ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the hospital that owns the ambulance …, or

(4) an ambulance not owned or operated by the hospital is diverted prior to presenting on hospital property. However, if the ambulance disregards the hospital's diversion instructions and presents on hospital property, the individual has come to the DED.

- The hospital's EMTALA obligations are triggered

If hospital EMS personnel on board the ambulance

determine that transporting the individual to the owner hospital would put the patient's life or safety at risk, we recognize that there may be some situations in which redirection of the ambulance is necessary to protect the life or safety of the individual and that under these circumstances it would not be an EMTALA violation to transport the individual to the closest hospital capable of treating his or her condition.


Federal Register

Tuesday,
September 9, 2003

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 482, and 489
Medicare Program; Clarifying Policies Related to the Responsibilities of Medicare-Participating Hospitals in Treating Individuals With Emergency Medical Conditions; Final Rule

Redirection of the ambulance

Document the request and reason for redirection including an explanation of the associated risks.

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operated ambulances be given an exemption from the requirements for situations in which the individual or family asks that the individual be transported to another facility other than the hospital that owns the ambulance.

Response: We agree that it would be more appropriate to refer to requirements that the individuals be taken to the "closest appropriate facility" rather than the "nearest hospital", and are including this change in paragraph (3) of the definition of "come to the emergency department" under § 489.24(b) of this final rule.

Regarding the redirection of an ambulance at the request of the individual's family, we believe existing regulations at § 489.24(c)(2) (now § 489.24(d)(3) of this final rule) regarding informed refusals of treatment would permit the ambulance to transport the individual to another facility. A medical record for the individual must be established and the refusal clearly documented in that record, in accordance with these regulatory requirements.

D. Provisions of the Final Rule

We are adopting, as final, the proposed revision to paragraph (3) under the definition of "come to the emergency department" under § 489.24(b) as it related to the applicability to EMTALA to hospital-owned ambulances, with the following modifications:

We are specifying the

We are changing the term "closest hospital" to "closest appropriate facility".

In addition, we are adding a new § 489.24(a)(2) to specify EMTALA responsibilities in the event of a bioterrorist attack.

XIII. Conditions of Participation for Hospitals

We are reminding hospitals and others that while these final regulations make it clear that, while stabilizing an individual with an emergency medical condition (or admitting the individual to the hospital as an inpatient) relieves the hospital of its EMTALA obligations, it does not relieve the hospital of all further responsibility for the patient who is admitted. Stabilization or inpatient admission also does not indicate that the hospital is thus free to improperly discharge or transfer the individual to another facility. Inpatients who experience acute medical conditions receive protections under the Medicare hospital CoPs, which are found at 42 CFR part 482. In addition, as noted earlier in this preamble and in the May 9, 2002 proposed rule preamble, we believe that outpatients who experience what may be an emergency medical condition after the start of an encounter with a health professional would have all protections afforded to patients of a hospital under the Medicare hospital CoPs. There are six hospital CoPs that provide these protections: emergency services, emergencies, initial treatment, and referral when appropriate.

The discharge planning CoP (§ 482.43, which applies to all Medicare-participating hospitals) requires hospitals to have a discharge planning process that applies to all patients. This CoP ensures that patient needs are identified and that transfers and referrals reflecting adequate discharge planning are made by the hospital. If an inpatient develops an acute medical condition and the hospital either does not offer emergency services or does not have the capability to provide necessary treatment, a transfer to another hospital with the capabilities to treat the emergency medical condition could be warranted. Hospitals are required to meet the discharge planning CoP in carrying out such a transfer.

The hospital CoP governing medical staff (§ 482.22) requires that the hospital have an organized medical staff that operates under bylaws approved by the governing body and is responsible to the governing body for the quality of medical care provided to patients by the hospital. Should the medical staff not be held accountable to the governing body for problems regarding a lack of provision of care to an inpatient who develops an emergency medical condition, this lack of accountability may be reviewed under the medical staff CoP, as well, and may result in a citation of noncompliance at the medical staff condition level for the hospital.

Finally, the quality assessment and

- With respect to redirection of an ambulance at the request of the individual's family, we believe existing regulations regarding "refusals of treatment" would permit the ambulance to transport the individual to another facility. A medical record for the individual must be established and the refusal clearly documented in that record, in accordance with these regulatory requirements (§ 489.24(d)(3))

Dedicated Emergency Department

- Must meet one of the following criteria regardless if it is on or off campus
  - Licensed by the state as an ED;
  - Known to public that it provides care for emergency medical conditions (EMCs) on an urgent unscheduled basis;
  - During the preceding calendar year it provided treatment of EMCs on an urgent unscheduled basis for at least 1/3 of all its outpatient visits .

- A DED could include a hospital's
  - Labor & Delivery Unit;
  - Psychiatric Unit;
  - Urgent Care Clinic (if it is participating in Medicare through a hospital).

It is not appropriate for a hospital to “log in” an individual and not provide a medical screening examination.

Medical Screening Examination (MSE)– what we mean

- Appropriate exam sufficient to detect the presence or absence of an EMC;
- Continuum of assessment and reassessment;
- Performed by qualified medical personnel;
- Extent and quality of the MSE is subject to review by the State Quality Improvement Organization

- Hospitals are not obligated to provide a MSE under EMTALA when:
  - There is no request for care (unless the prudent layperson standard)
  - The individual requests preventive care
  - Before presenting to the DED, the individual has begun to receive scheduled outpatient services
  - The individual is an inpatient
  - Use of a hospital's helipad when no request for care was made (unless the sending hospital has not conducted the MSE). If as part of the EMS protocol, EMS activates helicopter evacuation, the hospital w/the helipad is not obligated if they are not the intended receiving hospital.

Emergency Medical Condition - what we mean

- Emergency medical condition means:
  - a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in -
    - Placing the health of the individual in serious jeopardy
    - Serious impairment to bodily functions, or
    - Serious dysfunction of any bodily organ or part; or
    - With respect to a pregnant woman who is having contractions, that there is inadequate time to effect a safe transfer to another hospital before delivery, or that transfer may pose a threat to the health or safety of the woman or the unborn child.
- If an emergency medical condition is found, the hospital must do everything within its capability, including the use of ancillary services and on-call physicians, to stabilize the individual.
- An individual expressing suicidal or homicidal thoughts or gestures, if determined to be dangerous, would be considered to have an EMC.

Stabilizing treatment – what we mean

- Within the capabilities of the staff and facilities available at the hospital, further medical examination and treatment as required to stabilize the emergency regardless of the individual's payer source or financial status.
- 42 CFR 489.24(b) defines stabilized to mean: … no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer (discharge) of the individual from the hospital; or that a woman has delivered the child and placenta.
- An individual is stabilized if the treating physician or QMP has determined within reasonable clinical confidence, that the EMC has been resolved.
- If the hospital is unable to stabilize an individual within its capability, an appropriate transfer should be arranged.

Appropriate transfer – what we mean

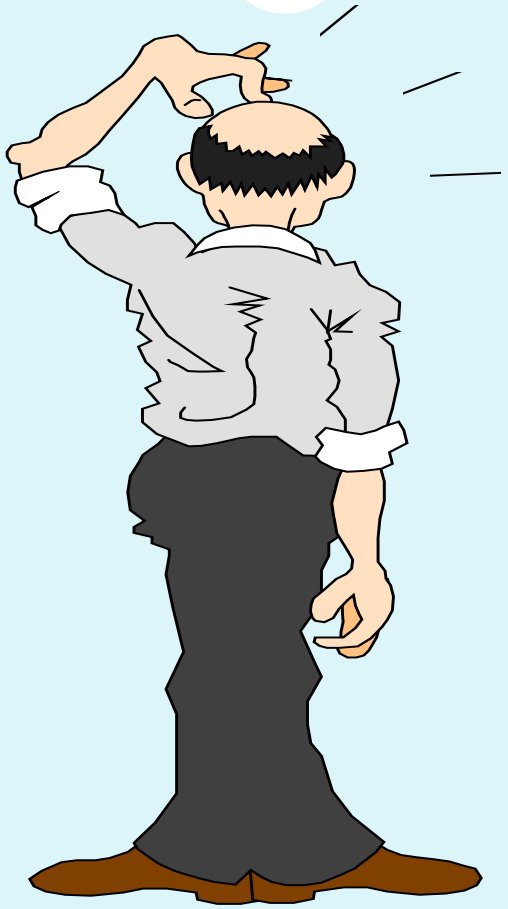
- If an individual at a hospital has an emergency medical condition that has not been stabilized, the hospital may not transfer unless:
  - The hospital provides medical treatment within its capacity that minimizes the risk to the individual's health;
  - The receiving hospital agrees to accept the transfer and has available space and qualified personnel to provide treatment;
  - The hospital (transferring) sends to the receiving hospital all medical records related to the individual's emergency;
  - Arranges the transport using qualified personnel and equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer.

Recipient Hospital Responsibilities – what we mean

- Medicare participating hospital that has specialized capabilities or facilities (including but not limited to burn units, trauma units, neonatal intensive care units, or with respect to regional referral centers) may NOT refuse to accept an appropriate transfer from a referring hospital (DED) within the boundaries of the U.S.
  - The provisions apply to any participating hospital with specialized capabilities, regardless of whether the hospital has a DED.
  - The provisions do NOT apply to an individual who has been admitted to a referring hospital.
  - A hospital with specialized capabilities that delays the treatment of an individual with an emergency who arrives as a transfer from another hospital ED could be in violation of EMTALA, depending on the circumstances of the delay.

Hospital settles with the OIG

Questions?



EMTALA Resources

http://cms.gov/Regulations-and-Guidance/Legislation/EMTALA/index.html

http://cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_v_emerg.pdf

http://www.ssa.gov/OP_Home/ssact/title18/1867.htm#t