DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850

Center for Clinical Standards and Quality/Survey and Certification Group

Ref: S&C: 15-10-Hospitals

DATE: **November 21, 2014**

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Emergency Medical Treatment and Labor Act (EMTALA) Requirements and Implications Related to Ebola Virus Disease (Ebola)

Memorandum Summary

- ***Ebola and EMTALA requirements:*** This Memorandum conveys information useful in responding to inquiries from hospitals concerning implications of Ebola for their compliance with EMTALA.
- ***EMTALA Screening Obligation:*** Every hospital or critical access hospital (CAH) with a dedicated emergency department (ED) is required to conduct an appropriate medical screening examination (MSE) of all individuals who come to the ED, including individuals who are suspected of having been exposed to Ebola, and regardless of whether they arrive by ambulance or are walk-ins. Every ED is expected to have the capability to apply appropriate Ebola screening criteria when applicable, to immediately isolate individuals who meet the screening criteria to be a potential Ebola case, to contact their state or local public health officials to determine if Ebola testing is needed, and, when a decision to test is made, to provide treatment to the individual, using appropriate isolation precautions, until a determination is made whether the individual has Ebola.
- ***EMTALA Stabilization, Transfer & Recipient Hospital Obligations:*** In the case of individuals who have Ebola, hospitals and CAHs are expected to consider current guidance of public health officials in determining whether they have the capability to provide appropriate isolation required for stabilizing treatment and/or to accept appropriate transfers. In the event of any EMTALA complaints alleging inappropriate transfers or refusal to accept appropriate transfers, CMS will take into consideration the public health guidance in effect at the time.
- ***Centers for Disease Control and Prevention (CDC) Website*:** CMS strongly urges State Survey Agencies (SAs), hospitals and CAHs to monitor the CDC website at http://www.cdc.gov/vhf/ebola/ for the most current guidance and information concerning Ebola identification, treatment, and precautions to prevent the spread of the disease, as well as their State public health website.

Background

Due to increasing public concerns with Ebola, CMS is receiving inquiries from the hospital industry concerning implications for their compliance with EMTALA. Concerns center around

the ability of hospitals and CAHs to fulfill their EMTALA screening obligations while minimizing the risk of exposure from Ebola infected individuals to others in the ED, including healthcare workers, and the isolation requirements for Ebola. In addition, we have also received questions about the applicability of EMTALA stabilization, transfer and recipient hospital obligations in the case of individuals who are found to have met the screening criteria for possible Ebola disease or who have been determined to have Ebola.

EMTALA requires Medicare-participating hospitals and CAHs that have a dedicated emergency department to, at a minimum:

- Provide an MSE to every individual who comes to the ED, for examination or treatment for a medical condition, to determine if they have an emergency medical condition (EMC); and

- Provide necessary stabilizing treatment for individuals with an EMC within the hospital's capability and capacity; and

- Provide for transfers of individuals with EMCs, when appropriate.

In addition, all Medicare-participating hospitals with specialized capabilities are required to accept appropriate transfers of individuals with EMCs if the hospital has the specialized capabilities an individual requires for stabilization as well as the capacity to treat these individuals. This recipient hospital obligation applies regardless of whether the hospital has a dedicated emergency department.

EMTALA Obligations when Screening Suggests Possible Ebola

It may be the case that hospitals, emergency medical services (EMS), and their State or local public health officials develop protocols for bringing individuals who meet criteria for a suspected case of Ebola only to hospitals that have been designated to handle potential or confirmed cases of Ebola. These pre-hospital arrangements do not present any conflict with EMTALA. This is the case even if the ambulance carrying the individual is owned and operated by a hospital other than the designated hospital, so long as the ambulance is operating in accordance with a community wide EMS protocol.

On the other hand, if an individual comes to an ED of a hospital or CAH, as the term "comes to the emergency department" is defined in the regulation at §489.24(b), either by ambulance or as a walk-in, the hospital must provide the individual with an appropriate MSE. We emphasize that it is a violation of EMTALA for hospitals and CAHs with EDs to use signage that presents barriers to individuals who may have been exposed to Ebola from coming to the ED, or to otherwise refuse to provide an appropriate MSE to anyone who has come to the ED for examination or treatment of a medical condition. However, use of signage designed to help direct individuals to various locations on the hospital property, as that term is defined in the regulation at §489.24(b), for their MSE would be acceptable.

If during the MSE the hospital or CAH concludes, consistent with accepted standards of practice for Ebola screening, that an individual who has come to its ED may be a possible Ebola case, the hospital or CAH is expected to isolate the patient immediately. Although levels of services

provided by EDs vary greatly across the country, it is CMS' expectation that all hospitals and CAHs are able to, within their capability, provide MSEs and initiate stabilizing treatment, while maintaining the isolation requirements for Ebola and coordinating with their State or local public health officials, who will in turn arrange coordination, as necessary, with the CDC.

At the time of the drafting of this memo, CDC's screening guidance called for hospitals and CAHs to contact their State or local public health officials when they have a case of suspected Ebola. According to that guidance, the State or local public health officials, together with the hospital, will make a determination as to whether Ebola testing of the individual is required.

- If it is determined that Ebola testing is not required, the hospital or CAH is expected to complete its MSE in accordance with accepted standards of practice and to take appropriate actions, depending on whether or not the individual has an EMC.

- If it is determined that Ebola testing is required, the hospital or CAH is expected to maintain the individual in isolation, providing treatment within its capability for the individual's symptoms as needed, until it has the test results or if, prior to test results, there is a determination by the responsible public health authorities that the case presents a strong probability of Ebola.

- If the individual tests negative for Ebola, the hospital or CAH is expected to complete its MSE in accordance with accepted standards of practice and to take appropriate actions, depending on whether or not the individual has an EMC.

- If the individual tests positive for Ebola, or the hospital together with state or local public health officials otherwise conclude that the individual likely has Ebola, even prior to obtaining test results, the hospital or CAH is expected to comply with the most recent State or local public health guidance in determining whether it has the capability to provide stabilizing treatment on site, or whether to initiate an appropriate transfer, in accordance with §489.24(e), to a hospital which has the capability to provide the required stabilizing treatment.

We appreciate the work of public health authorities, the Centers for Disease Control and Prevention (CDC) and hospitals to develop specialized capabilities to treat patients with Ebola. However, the existence of hospitals with specialized capabilities does not relieve any other hospital or CAH of its obligation to provide an appropriate medical screening examination, or fulfill any other EMTALA requirement relevant to the situation.

Other Enforcement Considerations

Should CMS receive complaints alleging either inappropriate transfers by a sending hospital or refusal of a recipient hospital to accept an appropriate transfer, it will take into consideration the State or local public health direction and designations of hospitals as Ebola treatment centers at the time of the alleged noncompliance concerning where Ebola treatment should be provided. It will also take into consideration any clinical considerations specific to the individual case(s).

Surveyors and managers responsible for EMTALA enforcement are expected to be aware of the flexibilities hospitals are afforded under EMTALA and to assess incoming EMTALA complaints accordingly in determining whether an on-site investigation is required. They are also expected to keep these flexibilities in mind when assessing hospital compliance with EMTALA during a survey.

Consistent with their obligations under the hospital and CAH Conditions of Participation (CoPs) §482.42 and §485.635(a)(3)(vi), hospitals and CAHs are expected to adhere to accepted standards of infection control practice to prevent the spread of Ebola. Since the Ebola virus is transmitted via droplets, strict adherence to droplet and contact isolation precautions must be followed. The CDC has issued extensive guidance on applicable isolation precautions and CMS strongly urges hospitals to follow this guidance. CMS recognizes the difficulties securing the recommended personal protective equipment (PPE) required for training and patient care that may be present in some circumstances at the time of this Memorandum.

The U.S. Department of Labor Occupational Health and Safety Administration (OSHA) has also provided guidance on worker protection related to Ebola at https://www.osha.gov/SLTC/ebola/ . Hospitals and CAHs are expected under their respective CoPs at §482.11(a) and §485.608(a) to comply with OSHA requirements, but CMS and state surveyors acting on its behalf do not assess compliance with requirements of other Federal agencies.

Latest CDC Guidance

The most up-to-date guidance regarding screening, testing, treatment, isolation, and other Ebola-related topics can be found on the CDC website at http://www.cdc.gov/vhf/ebola/index.html . Hospitals and CAHs are strongly urged to monitor this site as well as their State public health website and follow recommended guidelines and acceptable standards of practice. (See also S&C 15-02: http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-15-02.pdf) SAs are also encouraged to monitor the CDC and their state public health websites for up-to-date information.

Questions about this document should be addressed to hospitalSCG@cms.hhs.gov.

Effective Date: The information contained in this letter should be shared with all survey and certification staff, their managers, and the state/Regional Office training coordinators immediately.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management