Specialty Hospitals Discussed at EMTALA TAG Meeting

by Kathleen Ream, Director of Government Affairs

At its meeting held on October 26-28, 2005, the EMTALA Technical Advisory Group (TAG) discussed the problems general hospitals have in providing on call emergency services, and how EMTALA regulations might apply to physician owned, specialty hospitals. Representatives of national hospital associations told the group that physicians practicing in specialty hospitals should be required to provide support for on call services in the EDs of their local community hospitals.

In written testimony to the group, Federation of American Hospital's (FAH) Vice President and General Counsel, Jeff Micklos, stated that physician owned, limited service hospitals can have a negative impact on the ability of a community to treat emergency patients, because many specialty hospitals do not have an ED. As a result, Micklos said, "Physicians who have transitioned their practices to those limited service facilities are often no longer available to the community for purposes of providing on call coverage to the community hospital's emergency department."

Charles Hart, President and CEO of Regional Health, who testified to the group on behalf of the American Hospital Association (AHA), characterized community hospitals' decreasing ability to maintain the physician capacity necessary to provide emergency services as a "constant threat of an EMTALA violation." Hart recommended that specialty hospitals be required to have a pre existing agreement with community hospitals on which they intend to rely for emergency back up services. The agreement should address provisions to support the full time, emergency capacity within community hospitals, including on call coverage. "Every physician owned, limited capacity service provider that relies on the community's emergency services capacity should be obligated to support it," Hart said.

In a previous letter to the TAG, dated March 30, 2005, the American Medical Association noted that providing on call emergency services was a problem that preceded specialty hospitals. The physician group said, "Emergency departments have become this country's health care for the uninsured and it is extremely difficult for either hospitals or physicians to finance this growing level of uncompensated care."

The TAG also examined whether specialty hospitals should be federally required to maintain an ED, and whether they are subject to EMTALA requirements under which a Medicare participating hospital with specialized capabilities or facilities may not refuse to accept an appropriate transfer of a patient in need of such capabilities or facilities. Both the FAH and the AHA argued against requiring specialty hospitals to maintain an ED, because they generally do not have the capability to provide service in all emergency situations. While both associations agreed that EMTALA requires speciality hospitals to accept patients transferred to their facility when they have the capacity to treat them, Hart said, "It is unlikely, however, to have much of an effect on emergency access to specialty services." He maintained that the most important issue is the on call requirement for specialty hospital physicians.

PEER REVIEW DOCUMENTS NOT DISCOVERABLE UNDER EMTALA CLAIM

According to an October 21, 2005, ruling of the federal district court in Michigan (Stringfellow v. Oakwood Hospital and Medical Center), a plaintiff cannot avoid a state law that bars discovery of peer review materials in a malpractice lawsuit by claiming the documents are discoverable, because they relate to an EMTALA claim. The peer review documents are not relevant to the EMTALA failure to stabilize claim, Judge Virginia M. Morgan of the U.S. District Court for the Eastern District of Michigan said. Moreover, whether Alfred Stringfellow – who died shortly after he was discharged from Oakwood Hospital and Medical Center – was diagnosed with an "emergency condition," thus triggering the EMTALA requirement that he be stabilized before being discharged, "can be established from the [available] medical records," Morgan said. Oakwood Hospital must provide its emergency department procedures because they are relevant to show whether Oakwood followed standard procedures in administering an appropriate medical screening, but the hospital may withhold its peer review documents.

Stringfellow, who suffered from hypertension and had a history of smoking, drinking and cocaine use, went to Oakwood complaining of chest pains. X ray and EKG tests were largely normal, but showed Stringfellow had an enlarged heart. After his chest pains subsided, he was discharged with instructions to follow up in 24 to 48 hours. According to the court record, Stringfellow died several hours later of "a ruptured aortic dissection due to cocaine abuse and high blood pressure."

Valerie Stringfellow filed a malpractice action and federal EMTALA claim against the hospital and treating physician. The lawsuit sought the minutes from any hospital peer review meetings related to Alfred Stringfellow's care and depositions of any staff members present at the meetings. Stringfellow did not argue that the documents were protected as to the malpractice claim under Michigan's peer review privilege law. Rather, she argued the materials were related only to the EMTALA claim, to which the state law was inapplicable.

Liability under EMTALA attaches only if it is established that the hospital should have known that the patient had an emergent condition. As such, "Any post mortem conference designed to address whether staff should have known of some underlying condition or should have diagnosed something different may be relevant to a malpractice claim, but not to the EMTALA claim."

Full text of the decision is available at **http://op.bna.com/hl.nsf/r?Open=psts 6hjpwd**.

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Washington Watch

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