

EMTALA Community Call Plans and On-Call List Rules Finalized

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The Centers for Medicare & Medicaid Services (CMS) has adopted changes to EMTALA which include rules for community call plans and amends the regulations governing the on-call list. Effective October 1, 2008, the rules were part of the FY 2009 inpatient prospective payment system (IPPS) final rule.

In the 2009 IPPS proposed rule, CMS expressed its intent to revise EMTALA regulations to “clarify” that, when an unstable patient was admitted at one hospital and, subsequently, was transferred in an unstable condition via an appropriate transfer to a facility with specialized capabilities, the “receiving hospital” had an EMTALA obligation to accept the individual so long as the transfer was appropriate and the receiving hospital had the capacity to treat the individual.

CMS also finalized the regulations that would permit hospitals to meet the EMTALA requirement for maintaining an on-call physician list by participating in a formalized community call plan among hospitals, and retained all but one of the proposed call plan elements described in the proposed rule. The requirement that hospitals demonstrate evidence that they have analyzed the specialty on-call needs of the community to be served by the call plan was removed, because the proposed requirement would be “duplicative of the existing requirement that a hospital must assess the call plan annually.” The final proposed call plan elements are as follows:

- Clear delineation of on-call coverage responsibilities (when each hospital is responsible for on-call coverage)
- Definition of the specific geographic area to which the call plan applies
- Signatures from the appropriate representatives of each hospital participating in the plan
- Requirements that any local and regional EMS system protocol formally includes information on “community on-call” arrangements
- A statement specifying that, even if an individual arrives at a hospital that is not designated as the on-call hospital, that hospital still has an EMTALA obligation to provide a medical screening examination and stabilizing treatment within its capability
- Continued compliance by participating hospitals with EMTALA regulations governing appropriate transfers
- Reassessment of the call plan on an annual basis by participating hospitals

Language stating that a hospital was required to maintain an on-call list “in a manner that best meets the needs of the hospital’s patients” was removed. The regulations have been amended to state that an on-call list must be maintained “in accordance with the resources available to the hospital” and include sufficient guidance that a hospital is obligated to provide on-call services based on the resources it has available at the time, including the availability of specialists.

The final rule can be found at <http://edocket.access.gpo.gov/2008/pdf/E8-17914.pdf>

EMTALA Eye Injury Case Dismissed by Federal District Court

On August 14, 2008, the federal district court for the Eastern District of Louisiana dismissed a claim filed under EMTALA that a hospital improperly transferred an uninsured patient absent stabilizing his

eye injury (*Smithson v. Tenet Health System Hospitals Inc.*, E.D. La., No. 07-3953, 8/14/08).

The Facts

At 7:15 a.m. on August 4, 2005, Vincent J. Smithson arrived at the ED at Northshore Regional Medical Center after suffering an “open globe injury” to his eye. Smithson immediately was examined by an ED physician, Dr. Ernest Hansen, who subsequently consulted via telephone with the on-call ophthalmologist, Dr. Terrell Hemelt. Hemelt told Hansen to order a CAT scan to determine whether a foreign body was in the eye and to report the results back to Hemelt. After receiving the results at 9:45 a.m., Hemelt instructed the ED physician to ready Smithson for surgery, which Hemelt would perform when he arrived at the hospital, projected to be at noon.

At this point in the case’s background narrative, some facts were in dispute. Hemelt claimed that when he arrived at the hospital, he told Smithson and his mother, as Smithson was a minor, that surgery was needed for urgent repair. Hemelt reported that when he told Smithson that his surgery fees would amount to between \$1,000 to \$2,000, Smithson, who was uninsured, asked to be transferred. Hemelt also asserted that despite informing Smithson of the risks of transfer and advising him to have the surgery at Northshore, Smithson’s mother signed a form requesting a transfer. Hemelt certified on the form that the patient was stable prior to transfer.

Previous to transfer, a shield was placed on Smithson’s eye, he intravenously received antibiotics, and antiemetic was administered. At about 2:30 p.m., Smithson was transferred to the Medical Center of Louisiana at New Orleans (Charity Hospital), where he arrived at that hospital’s ED at 4:55 p.m. Smithson was examined at 7:30 p.m. and underwent surgery at 10:30 p.m. An infection in Smithson’s eye was detected the next morning, and three days later his eye was removed.

On August 3, 2007, Smithson (Plaintiff) sued Tenet Health System Hospitals, Inc. d/b/a Northshore Regional Medical Center, Terrell Hemelt, MD, and Louisiana State University Health Care Services Division, Medical Center of Louisiana at New Orleans. Plaintiff claimed that defendants violated EMTALA by “(1) failing to provide an appropriate medical screening for the plaintiff, (2) failing to give plaintiff stabilizing treatment, and (3) discouraging plaintiff from remaining at Northshore because he lacked insurance.”

Defendant moved for summary judgment on all claims and plaintiff moved for partial summary judgment on the issues of appropriate screening and stabilizing treatment. In an interesting discussion of the technicalities of the law as applied to this case, the court denied the cross-motions for summary judgment on July 30, 2008 (*Smithson v. Tenet Health System Hospitals Inc.*, E.D. La., No. 07-3953, 7/30/08). The court found genuine issues of material fact, which must be proved at trial by presentation of evidence and which must be evaluated by the finder of fact.

The Ruling

The case was returned for a jury trial. The jury found that defendant did not violate EMTALA. The claim was dismissed.

The text of the decision on the summary judgment motions is available at: <http://op.bna.com/hl.nsf/r?Open=mapi-7hgnem>