

SUBJECT: Emergency Medical Treatment and Labor Act (EMTALA) On-Call Requirements and Remote Consultation Utilizing Telecommunications Media

The Centers for Medicare & Medicaid Services (CMS) recently sent out a memo regarding EMTALA On-Call Requirements and Remote Consultation Utilizing Telecommunications Media.

Memorandum Summary

- The treating physician in a hospital's or critical access hospital's (CAH) dedicated emergency department (DED) who is conducting the medical screening examination and/or providing stabilizing treatment of an individual required by the EMTALA regulations at 42 CFR 489.24 may, without violating EMTALA, consult on the individual's case with a physician who is not present in the DED by means of any telecommunications medium that the physicians choose to use.
- This does not change the obligation under EMTALA of a physician who is on-call to make an in-person appearance in the DED **when requested to do so by the treating physician.**
- This guidance does not affect policy by any health care third party payer, including Medicare, governing the circumstances under which it will or will not pay for remote consultation services.
- The portions of the interpretative guidelines for 42 CFR 489.20(r) and §489.24(j) that discuss telemedicine or telehealth are superceded by this guidance.

It has been brought to the attention of the Centers for Medicare & Medicaid Services (CMS) that the interpretative guidelines for 42 CFR 489.20(r) and §489.24(j), concerning hospital/CAH on-call physician requirements under EMTALA, are being interpreted by some parties as prohibiting emergency department physicians from utilizing modern telecommunications to facilitate consultation with specialists who are not present in the hospital/CAH. There is no such prohibition under EMTALA. It is necessary to distinguish among:

- a hospital's/CAH's obligation under EMTALA to maintain an on-call list of physicians on its medical staff in a manner that best meets the needs of its patients;
- the obligation of an on-call physician to make an in-person appearance when requested to do so by the physician who is treating an individual who has come to the emergency department of the hospital/CAH; and
- remote consultation on the individual's case by the treating physician with another physician, who may or may not be on the hospital's/CAH's on-call list.

The EMTALA statute at Sections 1866 and 1867 of the Social Security Act and EMTALA regulations at 42 CFR 489.20(r) and §489.24(j) establish requirements regarding hospital/CAH on-call lists and the obligations of on-call physicians to make in-person appearances. These provisions apply to hospitals/CAHs participating in Medicare. Section 1866(a)(1)(I)(iii) and 42 CFR section 489.20(r)(2) require hospitals/CAHs to "maintain a list of physicians who are on call for duty after the initial examination to

provide treatment necessary to stabilize an individual with an emergency medical condition.” Each hospital/CAH must maintain its on-call list in a manner that best meets the needs of the hospital’s patients who receive services required under EMTALA. The resources available to a hospital/CAH, including the availability of on-call physicians, are taken into account when assessing the adequacy of its on-call list.

There is no EMTALA prohibition against the treating physician consulting on a case with another physician, who may or may not be on the hospital’s or CAH’s on-call list, by telephone, video conferencing, transmission of test results, or any other means of communication. CMS is aware that it is increasingly common for hospitals/CAHs to use telecommunications to exchange imaging studies, laboratory results, EKG’s, real-time audio and video images of patients, and/or other clinical information with a consulting physician not on the hospital/CAH premises. Such practices may contribute to improved patient safety and efficiency of care. In some cases it may be understood by the hospitals/CAHs and physicians who establish such remote consulting arrangements that the physician consultant is not available for an in-person assessment of the individual at the treating physician’s hospital/CAH.

However, if a physician:

- is on a hospital’s or CAH’s on-call list; **and**
 - has been requested by the treating physician to appear at the hospital; **and**
 - fails or refuses to appear within a reasonable period of time,
- then* the on-call physician may be subject to sanctions for violation of the EMTALA statutory requirements.

It is only when the treating physician requests an in-person appearance by the on-call physician that a failure by the latter to appear in person may constitute an EMTALA violation.

It is an entirely separate issue, outside the scope of EMTALA enforcement, whether or not insurers or other third party payers, including Medicare, will provide reimbursement to physicians who provide remote consultation services.

This clarification of existing policy will be incorporated into the SOM, Appendix V the next time it is revised.

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