EMTALA Waiver Urged in Declared Emergency

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WASHINGTON — The Emergency Medical Treatment and Labor Act should be waived during declared emergencies, the statute's technical advisory group recommended to federal regulators late last year.

The exemption would apply during national, state, county, city, or hospital-specific situations, the panel agreed at a meeting held in Washington. EMTALA imposes specific obligations on hospitals that participate in Medicare to treat emergency patients regardless of ability to pay.

In order to qualify for the proposed emergency-related exemption, a hospital would have to be directly experiencing the crisis, and the emergency must interfere with the hospital's ability to comply with EMTALA. In addition, a hospital would be required to take "reasonably practical steps" to secure care for patients by ensuring they are seen at another facility. Any patient care decisions must apply to all patients regardless of insurance status.

Although Centers for Medicare and Medicaid Services (CMS) representatives said they were not aware of any hospitals being cited under EMTALA for not providing care during an emergency, the panel concluded that providers should not have to worry about possible violations under extreme circumstances.

The recommended waiver would preclude patients from filing lawsuits against hospitals that could not provide care in an emergency situation, said panel member Brian Robinson, president and CEO of HCA Las Vegas. That would "allow hospitals and doctors to quite simply do the right thing for their patients at the time," he added.

In other action, the technical advisory group approved language that would affirm the use of technology in physician communications. The provision would replace current language in EMTALA guidelines that could be construed to prohibit the use of telemedicine devices.

The recommendation affirms that the treating physician has ultimate control over how a patient is treated, but that physicians may use a variety of methods to communicate with each other about patient care. It further indicates that an EMTALA violation occurs if an on-call physician refuses to physically appear at the emergency department when the treating physician requests it of him or her.

Panel members agreed that the use of technology should be encouraged to improve care in urban and rural settings.

"As we leverage technology to make a difference in how care is provided, we've got to ensure that there are no barriers to being able to utilize technology to improve patient care," said advisory group member Dr. Warren Jones, executive director of the Mississippi division of Medicaid.

The panel also agreed to disseminate a letter from CMS staff detailing when a hospital is responsible for a patient who arrives via emergency medical services. CMS staffer Dodjie Guioa said prior agency guidance on the issue was being used by EMS providers "as a weapon" to force hospitals to take patients as soon as they arrived, even if the facility did not immediately have enough capacity. "That was not the intent," he added.

EMS providers should stay with patients until resources are available to care for them, Mr. Guioa said. He added that it is not the intent of CMS to take enforcement actions against hospitals that cannot immediately take patients "if the circumstances are beyond their control."

The panel discussed a number of issues that will be decided at a later date. Those topics included improvements to the CMS EMTALA Web site and to EMTALA enforcement. Specifically, the panel is urging less variability by region in enforcement efforts, as well as improvements in surveyor training.

The issue of air ambulances also is under consideration. The group heard testimony indicating that hospitals sometimes refuse the services of specific air ambulance companies, insisting instead on the use of their own contractors.

The panel also is exploring whether psychiatric patients need a separate definition of emergency and whether there should be intermediate sanctions available for hospitals that potentially violate EMTALA.

Physician on-call issues remain a priority for the panel, including ways to encourage regionalization of services and to ensure that on-call specialists are available for needed care. ■