EMTALA, A GROWING CONCERN IN HOSPITAL RISK MANAGEMENT

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I. INTRODUCTION

Today, more than ever, hospitals are at risk for EMTALA enforcement – both by the federal government and through private lawsuits. EMTALA is the federal statute which was designed to prevent “patient dumping” – the transfer of patients who cannot pay for emergency department services. As interpreted by most courts, EMTALA applies to all patients, regardless of pay classification. Hospitals must carefully evaluate the requirements of managed care programs in the context of the strict mandates of EMTALA.

II. HISTORY OF THE EMTALA STATUTE

In 1994, the Health Care Financing Administration (HCFA) passed rules and regulations that delineated certain aspects of EMTALA and appeared to impose additional requirements. In 1998, HCFA issued “Interpretive Guidelines and Investigative Procedures” for investigating whether or not hospitals have complied with EMTALA. The Guidelines underscored that hospitals were not permitted to make verification, courtesy or pre-authorization calls to third-party payors before completing medical screening examinations and stabilizations required by EMTALA. According to the guidelines, hospitals which make pre-authorization calls are deemed to be in violation of the law.

III. OVERVIEW OF THE LAW

EMTALA applies to all hospitals that participate in the Medicare program. There are four fundamental EMTALA principles:

1. A hospital must provide an appropriate medical screening examination for any patient.

2. If a hospital determines a patient requires emergency medical treatment, it must provide such treatment – to the extent that it is able to do so – as is necessary to stabilize the medical condition.

3. A hospital may not transfer any patient in an unstabilized medical condition unless either the patient requests the transfer (after being the recipient of a specific informed consent) or a physician certifies that the risks of transfer are outweighed by the potential benefits.

4. Hospitals are precluded from inquiring about a patient’s insurance or ability to pay before providing the initial screening examination or before stabilizing any emergency condition.

The Guidelines emphasized the requirements of complying with EMTALA notwithstanding the dictates of any managed care organization. Specifically, the Guidelines provided:

- A hospital may not refuse to screen an enrollee of a managed care plan because the plan refuses to authorize treatment or to pay for such screening and treatment.

- The managed care plan cannot refuse to screen and treat or appropriately transfer individuals not enrolled in the plan who come to a plan hospital that participates in the Medicare program.

- It is not appropriate for a hospital to request or a health plan to require prior authorization before the patient has received a medical screening exam to determine the presence or absence of an emergency medical condition or until an existing emergency medical condition has been stabilized.

- Once an emergency medical condition has been determined not to exist or the emergency medical condition has been stabilized, EMTALA no longer applies and prior authorization for further services can be sought.

- A managed healthcare plan cannot deny a hospital permission to treat its enrollees. It may only state what it will or will not pay for.

- Regardless of whether a hospital will be paid, it is obligated to provide the services specified in the statute and the regulation.

On December 15, 1998, the Office of Inspector General and the Health Care Financing Administration issued a Special Advisory Bulletin and requested comments on it. The Bulletin suggests that the following practices be established:

- No prior authorization before screening or stabilization.

- No financial responsibility or advanced beneficiary notification forms.

- Qualified medical personnel must perform the medical screening examination.

- Well trained individuals should respond when a patient inquires about financial liability for emergency services.

- Make sure that patients voluntarily leaving the hospital are well informed of the care to which they are entitled and the risks of leaving the hospital.

Roberts v. Galen of Virginia, Inc., United States Supreme Court

On January 21, 1999, the United States Supreme Court issued its first decision involving EMTALA in the case of

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1. EMTALA (Emergency Medical Treatment and Active Labor Act) 42 U.S.C. §1395dd was enacted in 1986 and is also known as the COBRA (Consolidated Omnibus Budget Reconciliation Act) law. The statute was amended in 1988 and 1989 to add more specific provisions pertaining to on-call physicians in general, as well as the practice of obstetrics.
tests, CT scans, and/or diagnostic tests. Performing ancillary studies and physical examination other than that required under subsection (A) of this section or further medical examination and treatment required under subsection (B) of this section in order to inquire about the individual’s method of payment or insurance status.

Although a hospital may obtain information during the routine registration process about a patient’s third-party payer, it may not obtain advance approval for the screening examination or stabilization required by EMTALA. Hospitals may be cited for violating the statute if preliminary calls are made to insurance companies or employers prior to complying with the EMTALA requirements. The law cannot be avoided by directing the patient to call the third-party payer.

V. ENFORCEMENT PROVISIONS

EMTALA is enforced by the HCFA and the Office of Inspector General (OIG). HCFA can impose the ultimate sanction of terminating a hospital’s ability to receive Medicare or Medicaid funds. The OIG has the ability to fine hospitals or individual doctors for violations of the EMTALA statute.

EMTALA also provides a private cause of action which permits “any individual who suffers personal harm as a direct result of a participating hospital’s violation of [EMTALA]” to bring a suit against the hospital. It is a claim separate and distinct from allegations of medical malpractice. In an event a medical malpractice claim includes an EMTALA claim, effectively defending the lawsuit involves approaches unique to this type of claim.

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