



Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-07-19

**DATE:** April 26, 2007

**TO:** State Survey Agency Directors

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Provision of Emergency Services - Important Requirements for Hospitals

**Memorandum Summary**

- All hospitals are required to appraise medical emergencies, provide initial treatment and referral when appropriate, regardless of whether the hospital has an emergency department.
- A hospital is not in compliance with the Medicare Conditions of Participation (CoPs) if it relies on 9-1-1 services as a substitute for the hospital's own ability to provide services otherwise required in the CoPs. This means, among other things, that a hospital may not rely on 9-1-1 services to provide appraisal or initial treatment of individuals in lieu of its own capability to do so.

In this memorandum we affirm and explain current regulatory requirements pertaining to a hospital's ability to meet the emergency needs of individuals. Any hospital participating in Medicare, regardless of the type of hospital and regardless of whether the hospital has an emergency department must have the capability to provide basic emergency care interventions.

**Requirements Applicable to All Hospitals (except Critical Access Hospitals)**

The following Medicare hospital Conditions of Participation (CoP) apply to all participating hospitals (except Critical Access Hospitals) and provide a foundation for safe care for all persons, including those with emergency care needs. Critical Access Hospitals (CAHs) are governed by regulations separate from those governing hospitals, and may be found at 42 CFR 485.618.

- **Physician On Duty or On Call:** The Governing Body CoP at 42 CFR 482.12(c)(3) requires hospitals to have a physician either on duty (onsite) or on call at all times.

- ***A Responsible Physician for Each Patient:*** The Governing Body CoP at 42 CFR 482.12(c)(4) requires that an MD/DO is responsible for the care of each Medicare patient with respect to any medical or psychiatric problem that is present on admission or that develops during the hospitalization.
- ***RN Supervision & Availability 24/7:*** The Nursing Service CoP at 42 CFR 482.23(b) requires hospitals to provide 24-hour nursing services furnished by or supervised by an RN<sup>1</sup>, that an RN supervise and evaluate the care of each patient, and that an RN be immediately available, when needed, to provide bedside care to any patient.
- ***Right to Care in a Safe Setting:*** The Patients’ Rights CoP at 42 CFR 482.13(c)(2) states: “the patient has a right to receive care in a safe setting.”
- ***Governing Body Ensures Accountability:*** The Governing Body CoP at 42 CFR 482.12(a)(5) states: “[The governing body must:] ensure that the medical staff is accountable to the governing body for the quality of care provided to patients.”
- ***Medical Staff - Organized & Accountable:*** The Medical Staff CoP at 42 CFR 482.22(b) states: “The medical staff must be well organized and accountable to the governing body for the quality of care provided to patients.”
- ***Quality Assessment and Performance Improvement (QAPI):*** The CoP at 42 CFR 482.21(e) requires that the hospital’s governing body, medical staff, and administrative officials are responsible and accountable for ensuring that clear expectations for safety are established and that adequate resources are allocated for reducing risk to patients.
- ***Appraisal, Initial Treatment, Referral:*** The Governing Body CoP at 42 CFR 482.12(f)(2) states: “If emergency services [i.e., department] are not provided at the hospital, the governing body must assure that the medical staff has written policies and procedures for *appraisal of emergencies, initial treatment, and referral when appropriate.*” [emphasis added]
- ***Off-Campus Locations:*** For hospitals that do have an emergency department(s) but also have off-campus hospital location(s) that do not have an emergency department, the governing body must still assure that the medical staff has written policies and procedures for each off-campus location’s appraisal of emergencies and referral when appropriate (42 CFR 482.12(f)(3)).

### **Explanation of Appraisal, Initial Treatment, and Referral**

We emphasize that hospitals without emergency departments must nonetheless have appropriate policies and procedures in place for addressing individuals’ emergency care needs 24 hours per day and 7 days per week), including the following:

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<sup>1</sup> Rural hospitals that have in effect a 24-hour nursing waiver granted under 42 CFR 488.54(c) are excepted from this requirement.

- ***Appraisal of Persons with Emergencies:*** A hospital must have medical staff policies and procedures for conducting appraisals of persons with emergencies. The policies and procedures must take into account all of the other CoP requirements mentioned above and ensure that:
  - An RN is immediately available, as needed, to provide bedside care to any patient and that,
  - Among such RN(s) who are immediately available at all times, there must be an RN(s) who is/are qualified, through a combination of education, licensure, and training, to conduct an assessment that enables them to recognize the fact that a person has a need for emergency care.

The policies and procedures for appraisal should provide that the MD/DO (on-site or on call) would directly provide appraisals of emergencies or provide medical direction of onsite staff conducting appraisals.

- ***Initial Treatment:*** A hospital must have medical staff policies and procedures for providing the initial treatment needed by persons with emergency conditions. Among the RN(s) who must be available at all times in a hospital, there must be RN(s) who are qualified, through a combination of education, licensure, and training, to provide initial treatment to a person experiencing a medical emergency. The on-site or on-call physician could provide initial treatment directly or provide medical oversight and direction to other staff. This requirement, taken together with the other regulatory requirements described above, suggests that a prudent hospital would evaluate the patient population the hospital routinely cares for in order to anticipate potential emergency care scenarios and develop the policies, procedures, and staffing that would enable it to provide safe and adequate initial treatment of an emergency.
- ***Referral when Appropriate:*** A hospital must have medical staff policies and procedures to address situations in which a person's emergency needs may exceed the hospital's capabilities. The policies and procedures should be designed to enable hospital staff members who respond to emergencies to (a) recognize when a person requires a referral or transfer and (b) assure appropriate handling of the transfer. This includes arrangement for appropriate transport of the patient. Further, in accordance with the Discharge Planning CoP at 42 CFR 482.43(d), the hospital must transfer patients to appropriate facilities, i.e., those with the appropriate capabilities to handle the patient's condition. The regulation also requires that necessary medical information be sent along with the patient being transferred. This enables the receiving hospital to treat the medical emergency more efficiently.

### **What Is An Emergency?**

The hospital CoPs do not include a definition of a medical emergency. However, the Emergency Medical Treatment and Labor Act (EMTALA) statute and regulations offers insight into emergency medical conditions. Although this definition is tailored to the specific requirements of EMTALA, it also might be a helpful reference when considering a hospital's compliance with the regulatory requirements for emergency services. This definition is attached as Appendix A, but please observe the cautionary note provided at the end.

## **Hospitals With Emergency Departments - Other Specific Requirements**

Hospitals are not required to have an emergency department. The regulations refer to this as “offering emergency services” and the term “offer emergency services” is treated in the regulations as synonymous with having an emergency department. In accordance with the Governing Body CoP at 42 CFR 482.12(f)(1), a hospital that offers emergency services (i.e., has an Emergency Department) must be in compliance with the Emergency Services CoP at 42 CFR 482.55, including the following requirements:

- ***Meeting Emergency Needs of Patients:*** “The hospital must meet the emergency needs of patients in accordance with acceptable standards of practice.” (42 CFR 482.55)
- ***Direction by Qualified Medical Staff:*** “The services must be organized under the direction of a qualified member of the medical staff.” (42 CFR 482.55(a)(1))
- ***Integration with Other Departments:*** “The services must be integrated with other departments of the hospital.” (42 CFR 482.55(a)(2))
- ***Supervision:*** “The emergency services must be supervised by a qualified member of the medical staff.” (42 CFR 482.55(b)(1))
- ***Adequate Personnel Qualified in Emergency Care:*** “There must be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility.” (42 CFR 482.55(b)(2))

## **Patient Transportation and Emergency Medical Services (EMS)**

A hospital may arrange transportation of the referred patient by several methods, including using the hospital’s own ambulance service, the receiving hospital’s ambulance service, a contracted ambulance service, or, in extraordinary circumstances, alerting EMS via calling 9-1-1. There is no specific Medicare prohibition on a hospital with or without an emergency department calling 9-1-1 in order to obtain transport of a patient to another hospital. Use of 9-1-1 to obtain transport does not, however, relieve the hospital of its obligation to arrange for the patient’s transfer to an appropriate facility and to provide the necessary medical information along with the patient.

**A hospital policy or practice that relies on calling 9-1-1 in order for EMS to substitute its emergency response capabilities for those the hospital is required to maintain, as described above, is not consistent with the Medicare CoPs. For example, a hospital may not rely upon 9-1-1 to provide appraisal and initial treatment of medical emergencies that occur at the hospital. Such policy or practice should be considered as condition-level non-compliance with the applicable COP, 42 CFR 482.55 or 42 CFR 482.12(f).**

## Surveys

Surveyors are to evaluate each hospital's capability to address emergencies as required by the applicable regulations. In addition to complying with the requirements in the CoPs referenced on pages 1-2 of this memorandum, hospitals with emergency departments must comply with 42 CFR 482.55 and the EMTALA requirements at 42 CFR 489.24. Hospitals without emergency departments must comply with 42 CFR 482.12(f)(2). Surveyors should consider the discussion above when determining hospital compliance with these requirements. Hospitals that do not demonstrate full compliance with these requirements may be placing their patients' safety at significant risk.

Condition-level noncompliance with 42 CFR 482.55 also indicates condition-level noncompliance with 42 CFR 482.12(f)(1). Hospitals that are not in compliance with emergency services requirements in 42 CFR 482.12 or 42 CFR 482.55 should also be carefully surveyed for compliance with the closely-related CoPs that are referenced in this memo, and areas of noncompliance with these CoPs should also be cited, as appropriate.

If you have additional questions or concerns, please contact David Eddinger at 410-786-3429 or via email at [david.eddinger@cms.hhs.gov](mailto:david.eddinger@cms.hhs.gov).

**Effective Date:** Immediately. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum.

**Training:** The information contained in this letter should be shared with all survey and certification staff, their managers, and the State/RO training coordinators.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management

**Appendix A**  
**EMTALA Definition of “Emergency Medical Condition”**  
**42 CFR 489.24(b) Definitions**

“*Emergency medical condition* means –

“(1) A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances and/or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in\_\_

- (i) Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;
- (ii) Serious impairment to bodily functions; or
- (iii) Serious dysfunction of any bodily organ or part; or

“(2) With respect to a pregnant woman who is having contractions -

- (i) That there is inadequate time to effect a safe transfer to another hospital before delivery; or
- (ii) That transfer may pose a threat to the health or safety of the woman or the unborn child.”

Note: We emphasize that the hospital conditions of participation do not contain or mandate the above EMTALA definition for non-EMTALA issues. We include the EMTALA definition here only as a general guide because the hospital CoPs have no definition and the EMTALA definition is the only one in the Medicare regulations.