DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services

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DATE: **January 28, 2002**

FROM: Director
Survey and Certification Group
Centers for Medicaid and State Operations

SUBJECT: On-Call Requirements-EMTALA

TO: Associate Regional Administrators
Division of Medicaid and State Operations
Region I - X

The purpose of this program memorandum is to provide guidance to regional offices, state survey agency personnel and hospitals regarding the Emergency Medical Treatment and Labor Act (EMTALA). It has come to our attention that the medical community has concerns that the implementation and enforcement of EMTALA's policy for on-call physicians is not being enforced consistently across the country. We have prepared the following questions and answers based on questions we have received to clarify hospital responsibilities concerning on-call physicians.

1.Q. Is the hospital's medical staff required to provide on-call physician 24 hours/day 365 days/year?

1. A. EMTALA requires that an individual be evaluated and provided with medical support services and/or transfer arrangements that are consistent with the capability of the institution and the well being of the patient. The Social Security Act at § 1866 (I)(iii) requires that hospitals have 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. The hospital's capabilities include the skills of a specialist who has staff privileges to the extent that the hospital requires the specialist to furnish these services. If a physician on the list is called by a hospital to provide emergency screening or treatment and either refuses or fails to arrive within a reasonable time, the hospital and that physician may be in violation of EMTALA (§1867 (d)(1)(C)).

The State Operations Manual (SOM) further clarifies a hospital's responsibility for the on-call physician. The SOM (Appendix V, page V-15, Tag A404) states:

--Each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patient.
--Physicians, including specialists and subspecialists (e.g., neurologists) are not required to be on-call at all times. The hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

2.Q. How frequently is a hospital's medical staff of on-call physicians expected to provide on-call coverage?

2.A. Hospitals are expected to provide services based upon the availability of physicians required to be on-call. We are aware that conferences, vacations, days off, and the number of on-call physicians must be incorporated into the availability of staff.

CMS allows hospitals flexibility in covering their EMTALA obligation to provide services.

3.Q. It has been the practice of many hospitals to allow their senior medical staff physicians to be exempted from on-call duties. This exemption is usually written into the hospital's medical staff by-laws or the hospital's rules and regulations, and recognizes a physician's active years of service (20 or more years) or age (i.e., 60 years of age or older), or a combination of both. Does the Center for Medicare and Medicaid Services (CMS) recognize senior physician exemptions as legitimate concerning EMTALA compliance?

3.A. The hospital is responsible for maintaining an on-call list in a manner that best meet the needs of its patients as long as the exemption does not affect patient care adversely; CMS allows hospitals flexibility in the utilization of their emergency personnel.

4.Q. Is there a ratio CMS requires identifying how many days that a hospital must provide medical staff on-call physician based upon the number of physicians on staff for that particular speciality (i.e., whenever there are at least 3 physicians in a specialty is 24/7 coverage required?)

4.A. No. On-call coverage should be provided for within reason depending upon the number of physicians in a specialty. A determination about whether a hospital is in compliance with these regulations must be based on the facts in each individual case. CMS will consider all relevant factors, including the number of physicians on staff, the frequency with which the hospital's patients typically require services of on-call physicians, and the provisions the hospital has made for situations in which a physician in the specialty is not available or the on-call physician is unable to respond.

5.Q. Can two hospitals in the same geographic area share on-call coverage so that, together they are providing 100 percent call coverage in a particular speciality? Is there guidelines or rules by which this community call can be implemented and hospitals are in compliance with EMTALA?

5.A. No. The idea of two hospitals in the same geographic area share on-call coverage is not acceptable. This concept goes against the intent and purpose of EMTALA. Each hospital has its own EMTALA obligation based upon §1867 of the Social Security Act, 42 C.F.R. § 489.20 and 489.24 and CMS interpretative guidelines.

6.Q. Can physician groups be listed on the on-call list?

6.A. Title 42 C.F.R. 489.20 (r)(2) requires "a list of physicians who are on call for duty after the initial examination…" therefore; physician group names (i.e., The Kaiser Foundation) are not acceptable for identifying the on-call physician. Individual physician names are to be identified on the list.

This clarification will be added to the SOM, Appendix V the next time it is revised. Please share additional copies of this memorandum as necessary. If you have further questions, please contact Doris M. Jackson of my staff at (410) 786-0095.

/s/
Steven A. Pelovitz