Steve Sisolak
Governor

Richard Whitley, MS
Director

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Division of Public and Behavioral Health
Helping people. It's who we are and what we do.

Lisa Sherych
Administrator

Ihsan Azzam, Ph.D., M.D.
Chief Medical Officer

EMERGENCY MEDICAL TREATMENT AND LABOR ACT (EMTALA) REQUIREMENTS & IMPLICATIONS RELATED TO CORONAVIRUS DISEASE 2019 (COVID-19)

Guidance from the Centers for Medicare and Medicaid Services (CMS)
Ref: QSO-20-15 Hospital/CAH/EMTALA

Memorandum Summary

COVID-19 *and EMTALA Requirements:* This Memorandum conveys information in response to inquiries from hospitals and critical access hospitals (CAHs) concerning implications of COVID-19 for their compliance with EMTALA. This guidance applies to both Medicare and Medicaid providers.

• ***EMTALA Screening Obligation:*** Every hospital or CAH with a dedicated emergency department (ED) is required to conduct an appropriate medical screening examination (MSE) of all individuals who come to the ED, including individuals who are suspected of having COVID-19, and regardless of whether they arrive by ambulance or are walk-ins. Every ED is expected to have the capability to apply appropriate COVID-19 screening criteria when applicable, to immediately identify and isolate individuals who meet the screening criteria to be a potential COVID-19, to contact their state or local public health officials to determine next steps.

• ***EMTALA Stabilization, Transfer & Recipient Hospital Obligations:*** In the case of individuals with suspected or confirmed COVID-19, hospitals and CAHs are expected to consider current guidance of CDC and public health officials in determining whether they have the capability to provide appropriate isolation required for stabilizing treatment and/or to accept appropriate transfers. In the event of any EMTALA complaints alleging inappropriate transfers or refusal to accept appropriate transfers, CMS will take into consideration the public health guidance in effect at the time.

Background

Due to increasing public concerns with COVID-19, CMS is receiving inquiries from the hospital industry concerning implications for their compliance with EMTALA. Concerns center around the ability of hospitals and CAHs to fulfill their EMTALA screening obligations while minimizing the risk of exposure from COVID-19 infected individuals to others in the ED, including healthcare workers, and the isolation requirements for COVID-19. In addition, we have also received questions about the applicability of EMTALA stabilization, transfer and recipient hospital obligations in the case of individuals who are found to have met the screening criteria for possible COVID-19 infection or who have been determined to have COVID-19.

Please note this memorandum applies to both hospital and critical access hospital (CAH) wherever "hospital" is referenced.

EMTALA requires Medicare-participating hospitals and CAHs that have a dedicated emergency department to, at a minimum:

- Provide a medical screening exam (MSE) to every individual who comes to the ED for examination or treatment for a medical condition to determine if they have an emergency

medical condition (EMC). An emergency medical condition is present when there are acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in serious impairment or dysfunction.

• Provide necessary stabilizing treatment for individuals with an emergency medical condition EMC within the hospital's capability and capacity; and

• Provide for transfers of individuals with EMCs, when appropriate.

Please see *Attachment 1* for a discussion of alternate screening locations and increased surges in numbers of patients presenting to the ED.

Are hospitals required to accept transfers of patients with suspected or confirmed COVID-19 from small or rural hospitals that don't have appropriate or sufficient isolation facilities or equipment to meet current state or local public health or CDC recommendations?

Hospitals with capacity and the specialized capabilities needed for stabilizing treatment are required to accept appropriate transfers from hospitals without the necessary capabilities. Hospitals should coordinate with their State/local public health officials regarding appropriate placement of individuals who meet specified COVID-19 assessment criteria, and the most current standards of practice for treating individuals with confirmed COVID-19 infection status.

As in any case concerning a hospital's EMTALA obligations with respect to transfers of individuals, CMS would evaluate the capabilities and capacity of both the referring and recipient hospitals in order to determine whether a violation has occurred. Among other things, we would take into account the CDC's recommendations at the time of the event in question in assessing whether a hospital had the requisite capabilities and capacity. We note that the CDC's recommendations focus on factors such as the individual's recent travel or exposure history and presenting signs and symptoms in differentiating the types of capabilities hospitals should have to screen and treat that individual. The presence or absence of negative pressure rooms (Airborne Infection Isolation Room (AIIR)) would not be the sole determining factor related to transferring patients from one setting to another when in some cases all that would be required would be a private room. See the CDC website for the most current infection prevention and control recommendations for hospital patients with suspected or known COVID-19: https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html

In addition, all Medicare-participating hospitals with specialized capabilities are required to accept appropriate transfers of individuals with EMCs if the hospital has the specialized capabilities an individual requires for stabilization as well as the capacity to treat these individuals. This recipient hospital obligation applies regardless of whether the hospital has a dedicated emergency department.

What are the screening sites that may be set up?

Hospitals may set up alternative screening sites on campus

•The MSE does not have to take place in the ED. A hospital may set up alternative sites on its campus to perform MSEs.

-Individuals may be redirected to these sites after being logged in. The redirection and logging can even take place outside the entrance to the ED.
-The person doing the directing should be qualified (e.g., an RN) to recognize individuals who are obviously in need of immediate treatment in the ED.

•The content of the MSE varies according to the individual's presenting signs and symptoms. It can be as simple or as complex, as needed, to determine if an EMC exists.
•MSEs must be conducted by qualified personnel, which may include physicians, nurse practitioners, physician's assistants, or RNs trained to perform MSEs and acting within the scope of their State Practice Act.
•The hospital must provide stabilizing treatment (or appropriate transfer) to individuals found to have an EMC, including moving them as needed from the alternative site to another on-campus department.

B. Hospitals may set up screening at off-campus, hospital-controlled sites.

•Hospitals and community officials may encourage the public to go to these sites instead of the hospital for screening for influenza-like illness (ILI). *However, a hospital may not tell individuals who have already come to its ED to go to the off-site location for the MSE.*
•Unless the off-campus site is already a dedicated ED (DED) of the hospital, as defined under EMTALA regulations, EMTALA requirements do not apply.
•The hospital should not hold the site out to the public as a place that provides care for EMCs in general on an urgent, unscheduled basis. They can hold it out as an ILI screening center.
•The off-campus site should be staffed with medical personnel trained to evaluate individuals with ILIs.
•If an individual needs additional medical attention on an emergent basis, the hospital is required, under the Medicare Conditions of Participation, to arrange referral/transfer. Prior coordination with local emergency medical services (EMS) is advised to develop transport arrangements.

C. Communities may set up screening clinics at sites not under the control of a hospital

• There is no EMTALA obligation at these sites.
• Hospitals and community officials may encourage the public to go to these sites instead of the hospital for screening for ILI. *However, a hospital may not tell individuals who have already come to its ED to go to the off-site location for the MSE.*
• Communities are encouraged to staff the sites with medical personnel trained to evaluate individuals with ILIs.
• In preparation for a pandemic, the community, its local hospitals and EMS are encouraged to plan for referral and transport of individuals needing additional medical attention on an emergent basis.

EMTALA Obligations when Screening Suggests Possible COVID-19

If an individual comes to an ED of a hospital, as the term "comes to the emergency department" is defined in the regulation at §489.24(b), either by ambulance or as a walk-in, the hospital must provide the individual with an appropriate MSE. We emphasize that it is a violation of EMTALA for hospitals and CAHs with EDs to use signage that presents barriers to individuals who are suspected of having COVID-19 from coming to the ED, or to otherwise refuse to provide an appropriate MSE to anyone who has

come to the ED for examination or treatment of a medical condition. However, use of signage designed to help direct individuals to various locations on the hospital property, as that term is defined in the regulation at §489.24(b), for their MSE would be acceptable. If the hospital is intending to use another location to conduct the MSE, please see *Attachment 1* for additional information.
If during the MSE the hospital concludes that an individual who has come to its ED may be a possible COVID-19 case, consistent with accepted standards of practice for COVID-19 screening, the hospital is expected to isolate the patient immediately. Although levels of services provided by EDs vary greatly across the country, it is CMS' expectation that all hospitals are able to, within their capability, provide MSEs and initiate stabilizing treatment, while maintaining the isolation requirements for COVID-19 and coordinating with their State or local public health officials, who will in turn arrange coordination, as necessary, with the CDC.

Stabilizing treatment means, with respect to an "emergency medical condition", to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to occur. Once an individual is admitted or the emergency medical condition ends, the obligations under EMTALA end.

At the time of this memo's publication, CDC's screening guidance (https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-criteria.html) called for hospitals to contact their State or local public health officials when they have a case of suspected COVID-19. Officials will advise of next steps, in accordance with CDC recommendations on testing.

Other Enforcement Considerations

Should CMS receive complaints alleging either inappropriate transfers by a sending hospital or refusal of a recipient hospital to accept an appropriate transfer, it will take into consideration CDC guidance and State or local public health direction at the time of the alleged noncompliance. It will also take into consideration any clinical considerations specific to the individual case(s).

Consistent with their obligations under the hospital and CAH Conditions of Participation (CoPs) §482.42 and §485.640, hospitals and CAHs are expected to adhere to accepted standards of infection control practice to prevent the spread of infectious disease and illness, including COVID-19. Standard, contact, and airborne precautions with eye protection should be used when caring for the patient as noted in CDC's Interim Health Care Infection Prevention and Control Recommendations for Patients Under Investigation for Coronavirus Disease 2019 (COVID-19). The CDC has issued extensive guidance on applicable isolation precautions and CMS strongly urges hospitals to follow this guidance. CMS recognizes the difficulties securing the recommended personal protective equipment (PPE) required for training and patient care that may be present in some circumstances at the time of this memorandum. Hospitals and CAHs are expected under their respective CoPs at §482.11(a) and §485.608(a) to comply with Occupational Safety and Health Administration (OSHA) requirements, but CMS and state surveyors acting on its behalf do not assess compliance with requirements of other Federal agencies.

Latest CDC Guidance

The most up-to-date guidance regarding screening, testing, treatment, isolation, and other COVID-19 topics can be found on the CDC website at https://emergency.cdc.gov/han/HAN00427.asp Hospitals and CAHs are strongly urged to monitor this site as well as their State public health website and follow

recommended guidelines and acceptable standards of practice. State Survey Agencies are also encouraged to monitor the CDC and their state public health websites for up-to-date information.

CMS Resources
CMS has released a memo regarding triage, assessment and discharge for hospitals which will provide additional information about responding to COVID-19 cases. https://www.cms.gov/files/document/qso-20-13-hospitalspdf.pdf-2

CMS has additional guidance which may be beneficial related to EMTALA, and other topics surrounding health standards and quality. The document Provider Survey and Certification Frequently Asked Questions (FAQs), Declared Public Health Emergency All-Hazards are located at https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/All-Hazards-FAQs.pdf. These FAQs are not limited to situations involving 1135 Waivers, but are all encompassing FAQs related to public health emergencies and survey activities and functions.

Questions about this memo should be addressed to QSOG_EmergencyPrep@cms.hhs.gov.

FDA Resources:
• Emergency Use Authorizations: https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations

Effective Date: Immediately.