

# Insights

## **CMS Issues Long Awaited Clarification on Application of EMTALA to Psychiatric Hospitals**

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August 5, 2019

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On July 2, 2019, the Centers for Medicare and Medicaid Services ("CMS") issued a letter to State Survey Agency Directors with Frequently Asked Questions on the application of the Emergency Medical Treatment and Labor Act ("EMTALA") to Psychiatric Hospitals (the "FAQ"). This is the second time this summer that CMS has published guidance clarifying the EMTALA requirements – the first being a June 4, 2019 memo.

The federal EMTALA regulations at 42 CFR 489.24 place special responsibilities on Medicare-participating hospitals in emergency cases. Generally, the requirement for a Medicare-participating hospital to provide a medical screening examination and stabilizing treatment applies only to hospitals with "dedicated emergency departments."<sup>[1]</sup> However, there is still some ambiguity around the application of EMTALA requirements to psychiatric hospitals. CMS attempts to clarify this confusion with the FAQ. Specifically, CMS notes that intake or assessment areas in psychiatric hospitals may meet the threshold of a "dedicated emergency department" necessitating compliance with the EMTALA medical screening examination and stabilizing treatment requirements. CMS then clarifies that a hospital should perform such medical screening examination or provide stabilizing treatment within its capabilities and that "[t]here is no expectation that a psychiatric hospital with basic clinical services would be expected to provide the same level of comprehensive medical assessments or treatment as an acute care hospital."<sup>[2]</sup>

Other requirements of the EMTALA regulations are not limited to hospitals with a dedicated emergency department, such as the requirement that Medicare-participating hospitals with specialized capabilities/facilities may not refuse to accept a patient from a referring hospital an appropriate transfer of a patient that requires such specialized capabilities ("Recipient Hospital Requirement"). In the FAQ, CMS re-emphasizes that psychiatric hospitals offer specialized services and are therefore required to meet the Recipient Hospital Requirement. The current EMTALA guidance set forth in the State Operations Manual, Appendix V, clarifies the Recipient Hospital Requirement relating specifically to psychiatric hospitals stating "if an individual is found to have an emergency medical condition that requires specialized psychiatric capabilities, a psychiatric hospital that participates in Medicare and has capacity is obligated to accept an appropriate transfer of that individual. It does not matter if the psychiatric hospital does not have a dedicated emergency department."

In addition to the above, the FAQ also addresses qualifications of persons performing medical screening examinations, the relationship between EMTALA and hospital admission decisions, non-Emergency Medical Conditions, and mental health screenings by ED physicians.

For questions regarding EMTALA and psychiatric hospitals, please contact Meghan M. Linvill McNab or Amanda K. Schipp.

[1] Note, if the hospital does *not* have a “dedicated emergency department” it must still comply with the emergency requirements in the Hospital Conditions of Participation. See State Operations Manual, Appendix V, Part I, Section I and Tag A-2406/C-2406, as well as 42CFR 482.12(f).

[2] EMTALA may or may not establish the standard of care for professional liability purposes. However, it would require providers to assume a duty of care under the circumstances described in the FAQ, which would then implicate the applicable state law standard of care.