

EMTALA - FINAL RULE

Duties of On-Call Physicians

Effective November 10, 2003

The Emergency Medical Treatment and Active Labor Act (EMTALA) was enacted in 1986 to prevent hospital emergency departments from dumping indigent patients, although EMTALA's application extends to patients who are not indigent ¹. While EMTALA principally requires hospitals that receive federal funds to perform certain acts, it has significant meaning for physicians who are on-call at hospital emergency departments as well. If an on-call physician fails or refuses to respond within a reasonable time after notification, the on-call physician is subject to having civil monetary penalties up to \$50,000 per violation assessed against him or her by the federal government. The obligation of the on-call physician to respond to a request for assistance exists without regard for whether the patient is "his" or "her" patient.

Last August, the Centers for Medicare & Medicaid Services (CMS) issued the "final rule" which clarifies the 1986 EMTALA regulations and became effective November 10, 2003 ². The CMS final rule gives hospitals discretion to maintain on-call lists in a manner that is within its capability and best meets the needs of the hospital's patients. Physicians, including specialists and sub-specialists, are not required to be on-call twenty-four (24) hours a day. Physicians may be on-call simultaneously at more than one hospital and schedule elective surgery while on-call. However, hospitals must have written policies and procedures to be followed when a particular specialty is not available or when an on-call physician cannot respond because of situations beyond his or her control ³. Patients presenting at one hospital may not be transferred to another hospital merely for the convenience of the physician ⁴. The final rule states that generally the physician must be the one on the call list and not a physician assistant ("PA") or a nurse practitioner ("NP"). But "sometimes" a PA or NP is an appropriate responder to the Emergency Department (ED) call. The decision ultimately rests with the ED physician, if the ED physician disagrees then the on-call physician must respond ⁵.

The final rule clarifies that EMTALA does not apply to inpatients. Once a patient is admitted the EMTALA obligation ends. However, a physician may not avoid responding to a call by admitting the patient if the patient requires treatment in the ED. Admission by the physician must be made in good faith with the intention of providing treatment and a reasonable expectation that the patient will be hospitalized overnight ⁶. In addition, the final rule clarifies that a physician is not precluded from contacting a patient's regular physician as long as this contact does not delay the screening and stabilization of the patient ⁷.

In determining EMTALA compliance, CMS will generally consider all relevant factors, including the number of physicians on staff, other demands on these physicians, 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 ⁸.

It is not uncommon for plaintiffs in medical professional liability claims to allege EMTALA violations concerning an on-call physician's failure to respond. Although patients cannot sue physicians for EMTALA violations as they can hospitals, EMTALA allegations can inflame jurors in professional liability cases against physicians. Also, the assessed civil penalties for EMTALA violations discussed above may not be covered under a physician's medical professional liability insurance policy. Physicians should consult with their hospitals if they have any questions about on-call responsibilities at those facilities.

¹42 USCS § 1395dd

²Federal Register, Vol. 68, No. 174 (68 FR 53222-53264) September 9, 2003

³Federal Register, 68 FR 53250-53256

⁴Federal Register, 68 FR 53253

⁵Federal Register, 68 FR 53256

⁶Federal Register, 68 FR 53243-53248



⁷Federal Register, 68 FR 53225

⁸CMS Director Memo, "Simultaneously On Call" (June 13, 2002) & Federal Register, 68 FR 53253

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