



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE EMERGENCY MEDICAL SERVICES
152 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0152



MICHAEL P. CANTARA
COMMISSIONER

JAY BRADSHAW
DIRECTOR

EMTALA and the Use of Hospital Helipads: Maine EMS Advisory

Maine EMS is aware of a concern on the part of staff at some hospitals about the use of their helipads for direct transfer of patients from an ambulance to a helicopter. The concern is that this action, without medical evaluation of the patient by a physician at that hospital may have EMTALA ramifications. The purpose of this advisory is to provide some guidance with respect to that issue.

Maine EMS cannot provide legal advice or interpretation of Maine or Federal laws. If you have legal questions, please consult a qualified attorney.

EMTALA in Context

The 2004 “State Operations Manual Appendix V - Interpretive Guidelines Responsibilities of Medicare Participating Hospitals In Emergency Cases” (Part I, Section1) states:

Medicare participating hospitals must meet the Emergency Medical Treatment and Labor Act (EMTALA) statute codified at section 1867 of the Social Security Act, the accompanying regulations in 42 CFR §489.24 and the related requirements at 42 CFR 489.20(l), (m), (q), and (r).

EMTALA requires hospitals with emergency departments to provide a medical screening examination (MSE) to any individual who comes to the emergency department and requests such an examination, and prohibits hospitals with emergency departments from refusing to examine or treat individuals with an emergency medical condition (EMC).

The term hospital includes critical access hospitals. The provisions of EMTALA apply to all individuals (not just Medicare beneficiaries) who attempt to gain access to a hospital for emergency care. The regulations define hospital with an emergency department to mean a hospital with a dedicated emergency department (ED). In turn, the regulation defines dedicated emergency department as any department or facility of the hospital that either

- (1) is licensed by the state as an emergency department;*
- (2) held out to the public as providing treatment for emergency medical conditions; or*
- (3) on one-third of the visits to the department in the preceding calendar year actually provided treatment for emergency medical conditions on an urgent basis.*

PHONE: (207) 626-3860

FAX: (207) 287-6251

TDD: (207) 287-3659

With offices located at: Central Maine Commerce Center, 45 Commerce Drive – Suite 1, Augusta, ME 04330

EMTALA and Hospital Helipads

Additional guidance from the 2004 “State Operations Manual Appendix V - Interpretive Guidelines Responsibilities of Medicare Participating Hospitals In Emergency Cases” (Part II “Interpretive Guidelines” §489.24(a))

clarifies the responsibilities of Medicare participating hospitals with regard to the use of the hospital helipad as a transit point for an EMS service intercept with a medical helicopter. It states:

The following two circumstances will not trigger EMTALA:

The use of a hospital’s helipad by local ambulance services or other hospitals for the transport of individuals to tertiary hospitals located throughout the State does not trigger an EMTALA obligation for the hospital that has the helipad on its property when the helipad is being used for the purpose of transit as long as the sending hospital conducted the MSE prior to transporting the individual to the helipad for medical helicopter transport to a designated recipient hospital. The sending hospital is responsible for conducting the MSE prior to transfer to determine if an EMC exists and implementing stabilizing treatment or conducting an appropriate transfer. Therefore, if the helipad serves simply as a point of transit for individuals who have received a MSE performed prior to transfer to the helipad, the hospital with the helipad is not obligated to perform another MSE prior to the individual’s continued travel to the recipient hospital. If, however, while at the helipad, the individual’s condition deteriorates, the hospital at which the helipad is located must provide another MSE and stabilizing treatment within its capacity if requested by medical personnel accompanying the individual.

*If as part of the EMS protocol, EMS activates helicopter evacuation of an individual with a potential EMC, the hospital that has the helipad does not have an EMTALA obligation if they are not the recipient hospital, **unless a request** is made by EMS personnel, the individual or a legally responsible person acting on the individuals behalf for the examination or treatment of an EMC.*

Hospital Owned or Hospital Owned and Operated Services

On the following page is a document issued by Medicare staff to clarify their position on hospital owned or hospital owned and operated services.



NOV 24 2000

SURVEY AND CERTIFICATION REGIONAL LETTER NO. 00-10

SUBJECT: Hospital Owned and Operated Ambulance Participating in Emergency Medical Services

REFER TO: SC-25-16

Recent information from our Central Office clarified the Health Care Financing Administration's (HCFA) policy regarding hospital owned ambulances that operate within the Emergency Medical System. The guidance applies to helicopter ambulance as well as ground ambulance.

The policy clarifies Appendix V, Interpretive Guidelines and Investigative Procedures for Responsibilities of Medicare Participating Hospitals in Emergency Cases, page V-24. The current *State Operations Manual* (SOM) reads as follows:

In some cases, local, State or regionally approved emergency medical systems (EMS), point-of-entry, and/or system protocols are in place. Compliance with EMS protocols with respect to the transport of emergent patients is usually deemed to indicate compliance with §1867; however a copy of the protocol should be obtained and reviewed at the time of the survey.

The interpretive guidelines make no mention of hospital owned and operated ambulances participating in the EMS; therefore, HCFA is issuing guidance to address hospital-owned ambulance that operates within the EMS.

Central Office staff clarified that a hospital-owned ambulance is not a hospital-owned and ~~operated~~ ambulance, as referenced in 42 CFR 489.24(b), if the home hospital lacks the authority to determine the destination of the emergency patient, because that function is controlled by the EMS.

Under this interpretation, the individual in the hospital-owned ambulance has not "come to the emergency department" and the home hospital does not incur an Emergency Medical Treatment and Labor Act (EMTALA) obligation to that individual. If an individual is transported by an ambulance **owned and operated** by a hospital, the patient has "come to the hospital emergency department" for the purposes of EMTALA and the hospital has incurred an EMTALA obligation as to that patient.

These interpretative guidelines will be added to the SOM, Appendix V, the next time they are revised.

Please direct questions related to this information to Joyce Danner or Kathy Pozek of this office at telephone (816) 426-2011.

Thomas W. Lenz
Associate Regional Administrator
for Medicaid and State Operations