



# Client Alert



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## CMS Issues EMTALA Guidance

On March 6th CMS issued revisions to the EMTALA Interpretive Guidelines in response to changes in the regulations which were included in the FY 2009 Inpatient Prospective Payment System final rule. A notable feature of those regulations was the addition of a provision that permits hospitals to develop Community Call Plans ("CCP") as a means of satisfying their emergency department on-call responsibilities. A CCP, that meets six requirements specified by the new regulations, would allow hospitals to designate a specific hospital in a region as the on-call facility for a specified time period, or for a specified service, or both.

In response to this new development, the revised Guidelines issued by CMS last month included some changes that address the manner a hospital should maintain its list of on-call specialists available to treat patients in its emergency department. If a hospital participates in a CCP then its on-call list must not only include physicians who are on its medical staff but also must include the names of physicians at other hospitals who are on-call pursuant to the plan. The list must be up-to-date and accurately reflect the current privileges of the physicians on-call.

Participation in a CCP does not require that on-call physicians must travel from the hospital where they are directly on-call to the hospital needing their services. Instead the CCP facilitates appropriate transfers to the hospital which is providing the specialty on-call services pursuant to the plan. The hospital where the individual initially presented still has an EMTALA obligation to conduct a medical screening examination and, if an emergency medical condition ("EMC") is found, to provide stabilizing treatment within its capability and capacity. However, the hospital can appropriately transfer the individual pursuant to the CCP to the designated on-call hospital. The new Guidelines advise that it would be sufficient for an EMTALA surveyor, who is investigating the appropriateness of the transfer in such a situation, to confirm that the individual had an EMC which required the services of a specialist who was on the hospital's on-call list, but was providing the on-call services directly at another CCP hospital.

Among the other items noted in the guidance is a caveat associated with the new regulation which provides specifies that EMTALA does not apply to inpatients. The regulation specifies that after an individual has been admitted to the hospital as an inpatient EMTALA no longer applies to that individual and that a hospital with specialized capabilities does not have an EMTALA obligation to accept an appropriate transfer of that individual. CMS cautions that an individual who presented to the emergency department and then was admitted to observation is considered an outpatient of the hospital, and that receiving hospitals with specialized capabilities do have EMTALA obligations to accept the transfer of such individuals.

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