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CMS Updates EMTALA Signage for Hospitals

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On August 13, 2024, the Centers for Medicare and Medicaid Services (CMS) and its Center for Clinical Standards and Quality / Quality, Safety & Oversight Group issued its memorandum QSO-24-17-EMTALA (the “Memorandum”), providing updated model signage for hospital emergency departments to use to help comply with the Emergency Medical Treatment and Labor Act (EMTALA).

EMTALA is a federal law that requires hospitals with emergency departments to screen incoming patients for emergency medical conditions and, if necessary, stabilize patients regardless of their ability to pay for treatment.¹ Generally, emergency departments must screen patients who present for emergency treatment to determine whether an emergency medical condition exists and, if so, must provide further examination and treatment until the patient’s emergency medical condition is stabilized or until the patient may be transferred to another facility (such as when a higher level of care is required).² EMTALA has received much attention in recent years, especially as it relates to the use of abortion procedures as a method of stabilizing emergency care and in relation to the laws of certain states that enacted partial or total abortion bans in the wake of the US Supreme Court’s *Dobbs* decision.

CMS imposes numerous requirements for healthcare facilities, including hospitals, to enter provider agreements that enable them to participate in the Medicare program and receive payment for services to Medicare beneficiaries.³ In its Medicare provider agreements, CMS requires hospitals to provide certain notices to patients regarding their rights under EMTALA.⁴ In relevant part, CMS’ regulations require a hospital that is party to a Medicare provider agreement to:

post conspicuously in any emergency department or in a place or places likely to be noticed by all individuals entering the emergency department, as well as those individuals waiting for examination and treatment in areas other than traditional emergency departments (that is, entrance, admitting area, waiting room, treatment area), a sign (in a form specified by the Secretary) specifying rights of individuals under Section 1867 of the Act with respect to examination and treatment for emergency medical

conditions and women in labor[.]⁵

Additionally, the hospital's signage must indicate whether the hospital participates in a state's Medicaid program.⁶

The Memorandum reminds hospitals of their signage obligations under 42 C.F.R. § 489.20(q)(1) and (2), including the requirements that the signage “must be in clear and simple terms and language(s) that are understandable by the population served by the hospital,” and that the signs “must be posted in a place or places likely to be noticed by all individuals entering the emergency department,” in addition to other patients seeking treatment.⁷

CMS' new model posters are available in the link section of the website provided at the bottom of this alert. While hospitals are not required to use CMS' provided sign, the regulation does require hospitals to use signage “in a form specified by the secretary”; therefore, hospitals may wish to use these documents to ensure all relevant information and disclosures are provided to patients.

Failure to comply with EMTALA may be a basis for penalties, sanctions, and even civil claims against hospitals. Hospitals and physicians who violate EMTALA may be subject to civil monetary penalties⁸ under the civil monetary penalties law,⁹ in addition to other state-specific penalties or sanctions. Additionally, individual patients who suffer personal harm as a result of a Medicare-participating hospital's violation of EMTALA may bring a separate civil claim under the laws of the state where the hospital is located.¹⁰

The new signage identified in the Memorandum is available here:
<https://www.cms.gov/medicare/regulations-guidance/legislation/emergency-medical-treatment-labor-act>

The Memorandum is available here:
<https://www.cms.gov/files/document/qso-24-17-emtala.docx>

¹ 42 U.S.C. § 1395dd(a).

² 42 U.S.C. § 1395dd(b)(1), (c).

³ See generally Title 42 of the United States Code, Part 489.

⁴ 42 C.F.R. § 489.20(q)(1).

⁵ *Id.*

⁶ 42 C.F.R. § 489.20(q)(2).

⁷ Memorandum at 1.

⁸ 42 U.S.C. § 1395dd(d)(1).

⁸ 42 U.S.C. § 1320a-7a.

¹⁰ 42 U.S.C. § 1395dd(d)(2).

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