

Hospitals Beware: What to Expect During an EMTALA Investigation

Article

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The Centers for Medicare and Medicaid Services (CMS) has increasingly focused its efforts on investigating hospital emergency departments for potential violations of the Emergency Medical Treatment and Labor Act (EMTALA), which guarantees access to emergency medical services if a patient requests examination or treatment regardless of ability to pay.

Earlier this year, CMS announced that it is investigating two hospitals that violated EMTALA by not providing necessary stabilizing treatment to a pregnant individual experiencing an emergency medical condition. Such investigations can impose significant burdens on hospitals, which must be well prepared to show exactly how they fulfilled their EMTALA obligations. If they fail, the consequences can include major fines and loss of Medicare participation.

EMTALA Investigations

The investigation process is familiar. Once CMS receives an EMTALA complaint, the Regional Office (RO) evaluates it and may refer the case to the state survey agency (SA). The SA then initiates an investigation by visiting the hospital unannounced. The SA examines the complaint case and a sample of other emergency department records and interviews hospital staff.

If the initial allegation is confirmed, the investigation continues with an emphasis on the hospital's EMTALA compliance within the last six months. Based on the SA's report, the RO decides if EMTALA was violated. If it is determined there was a violation, a Notice of Violation is issued to the hospital that outlines the specific violation(s), the proposed remedies, and any penalties that may be imposed. CMS then determines whether the violation constitutes an immediate jeopardy. The hospital has the opportunity to comment on the evidence relied upon by the SA and RO and to present additional evidence to CMS demonstrating the hospital's compliance.

Preparing for an investigation

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Hospitals must be prepared for the possibility of an EMTALA investigation at any time. They should ensure their policies and procedures align with EMTALA's requirements and keep accurate and complete documentation of medical screening examinations, stabilizing treatment provided, transfer requests and decisions, training records, and incident reports. Patient records should be audited to make sure that appropriate care consistent with EMTALA is adequately documented. If deficient documentation is discovered, the record should be appropriately corrected. Hospitals should stay informed regarding any updates to the EMTALA regulations and maintain open lines of communication with CMS.

Penalties for EMTALA violations

Hospitals and physicians found to be in violation of EMTALA can face severe consequences. Significant civil monetary penalties (CMPs) (sometimes over \$100,000) may be imposed, corrective action plans may be required, Medicare provider agreements may be terminated, and other appropriate measures may be pursued to address the violation and promote compliance. Hospitals may also be held liable in civil lawsuits, either from patients or from transferring or receiving hospitals.

CMS has made it clear that it will ensure that hospitals are in compliance with federal law and that EMTALA guarantees are protected. Hospitals and providers should prepare for unannounced investigations by taking steps now to ensure compliance.

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