

Uncertainty of State Abortion Laws Leads to CMS Investigations of Hospitals Denying Emergency Care

Article

Amundsen Davis Health Care Alert

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On May 1st, the Centers for Medicare and Medicaid Services (CMS) announced investigations into two hospitals that did not provide necessary stabilizing treatment to a pregnant individual experiencing an emergency medical condition (EMC) in violation of the Emergency Medical Treatment and Labor Act (EMTALA), which guarantees access to emergency medical services regardless of ability to pay. EMTALA includes pregnancy-related emergencies, which include ectopic pregnancy, complications of pregnancy loss, and preeclampsia.

In announcing the investigations, HHS Secretary Becerra emphasized that the EMTALA requirements have not changed and continue to require necessary stabilizing treatment for pregnant patients regardless of recent changes in abortion laws. The investigations into the two hospitals are the first of their kind that CMS has acknowledged and demonstrate the impact of changing abortion laws around the country after the Supreme Court overturned *Roe v. Wade*.

The Missouri hospital in the investigation was cited for denying an emergency abortion after the pregnant person was allegedly told her pregnancy was no longer viable but that the hospital could not terminate it because it was not immediately life-threatening for her and Missouri law prohibited abortions if a fetal heartbeat was detectable. The patient then drove three hours away to another hospital in Kansas for treatment, where doctors advised the patient that her pregnancy was no longer viable and that her condition would deteriorate rapidly but said they could not provide her with the recommended treatment because it could be considered an abortion, which hospital policy prohibited. CMS identified these failures to treat as violations of EMTALA.

Status of Abortion in Indiana, Missouri and Wisconsin

While abortion is legal in Illinois, it is currently banned in Wisconsin (although that may change in the coming months) and Missouri (only exception is for a medical emergency to prevent the death of the pregnant woman or when “a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function”). In Indiana, although the state’s abortion ban is still

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on hold due to a new lawsuit filed on the eve of the ban taking effect, abortion services in the state have essentially stopped under the assumption that the most recent legal challenge will fail. As a result, in Indiana abortions are banned unless a "lethal fetal anomaly" is detected before 22 weeks of pregnancy or a pregnancy resulting from rape or incest is terminated within the first 12 weeks.

Responsibilities of Hospitals and Providers under EMTALA

EMTALA imposes three responsibilities on hospitals participating in Medicare:

1. Provide patients with a medical screening examination (MSE)

If an individual presents to the emergency department and requests examination or treatment, the hospital must provide an appropriate MSE to determine whether an EMC exists or whether the person is in labor. EMC means—

(A) an acute medical condition that could result in—

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part; or

(B) with respect to a pregnant woman who is having contractions—

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

2. Stabilize any patients with an EMC

If an EMC is identified during the MSE, the hospital must provide stabilizing treatment to the patient within its capabilities.

3. Transfer appropriate patients

If a hospital cannot provide stabilizing treatment, it must transfer the patient to another appropriate facility.

These requirements apply regardless of any state laws or mandates that apply to specific procedures, including abortion. Thus, if a pregnant individual presents to an emergency department with an EMC related to their pregnancy, EMTALA requires the hospital to provide a MSE and stabilizing treatment, as appropriate, to address the EMC. The care provided to the individual may involve an abortion if it is deemed necessary to stabilize the patient's EMC.

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Both hospitals and physicians are subject to penalties for EMTALA violations, which can be steep. Therefore, it is important for providers to understand EMTALA-specific requirements for appropriate screening, stabilization and transfer and for hospitals to have policies that incorporate these requirements.

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