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October 13, 2009

AFL 09-37

**TO:** General Acute Care Hospitals

**SUBJECT:** Disaster and Emergency Response and Medical Screening Exams

**Authority:**

Nursing Practice Act, Business and Professions (B&P) Code §2700 et seq.  
California Code of Regulations (CCR), Title 22, §70706.2, §70741  
Code of Federal Regulations (CFR), 42 CFR §489.24

**Guidelines Referenced:**

CMS Guidelines to State Survey Agency Directors, S&C 09-52, August 14, 2009

**Background:**

It will be a challenge for the California medical community to respond to a severe pandemic. This situation is likely to worsen given the increasing numbers of people likely to go to the Emergency Department for care.

During ongoing California Department of Public Health H<sub>1</sub>N<sub>1</sub> provider conference calls and a recent conference, entitled “Disaster Planning for California Hospitals,” participants have asked the Licensing and Certification Program (L&C) for clarification on emergency and disaster response measures that can be implemented to meet health care surge. Hospitals are looking for ways to meet the projected demand for care, but have concerns about violating existing regulatory and legal requirements.

This All Facilities Letter (AFL) addresses whether or not a Registered Nurse (RN) can conduct Emergency Medical Treatment and Active Labor Act (EMTALA) compliant Medical Screening Exams (MSE).

**Question regarding Medical Screening Exams:**

Concerns have been raised about having an RN conduct MSEs and whether or not this could violate EMTALA. The response to this concern is that RNs may conduct MSEs without violating EMTALA given that certain conditions are met.

EMTALA does not explicitly require that a physician conduct all MSEs. The issue of EMTALA compliance and who can conduct MSEs has been clarified by CMS in a recently published guideline to State Survey Agency Directors. The S&C 09-52

published on August 14, 2009 states, "MSEs must be conducted by qualified personnel, which may include physicians, nurse practitioners, physician's assistants, or RNs trained to perform MSEs and acting within the scope of their State Practice Act." (See attached S&C 09-52)

Furthermore, the California Nursing Practice Act, as established in B&P Code §2700 et seq., does not preclude the conduct of MSEs provided that RNs are operating within the context of well established Standardized Procedures.

RNs currently conduct MSEs in some California hospitals, but there are a number of hospitals where this is not the case. For those hospitals, there are steps that each hospital would have to take in order to establish that MSEs fall within the RN scope of practice. The steps to be completed by hospitals to establish this, per 42 CFR §489.24(a)(1)(i), the above B&P Code §2700 et seq., and per the Committee on Interdisciplinary Practice in accord with 22 CCR §70706.2, include:

1. Having provisions for RNs to conduct MSEs in the Medical Staff Bylaws and/or rules and regulations
2. Having the provisions approved by the Hospital's Governing Body
3. Developing and obtaining approval, by the Hospital per the above law and regulations, of Standardized Procedures for RN use that provide:
  - a. The conditions under which a RN can conduct MSEs, such as during an emergency or health care surge.
  - b. The evidence used to determine that the RN has the necessary experience, training, and/or education to conduct MSEs.

**Submission and review of hospital disaster response plans to L&C:**

Hospitals are required to plan for disasters per CCR, Title 22 §70741, but there is no requirement for submission of these plans to L&C. L&C does not intend to request hospital disaster plan submission or provide any centralized review of these plans.

If you have questions about this AFL, please review the attached S&C guidelines 09-52 addressing EMTALA issues. For further clarification, please contact your L&C District Office.

Sincerely,

**Original Signed by Kathleen Billingsley, R.N.**

Kathleen Billingsley, R.N.  
Deputy Director  
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Attachment