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AFL 07-04

TO: General Acute Care Hospitals

SUBJECT: EMTALA – “Parking” of Emergency Medical Service Patients in Hospitals

The California Department of Public Health (CDPH), (formerly California Department of Health Services), Licensing and Certification Program, is sending this important reminder in light of information received from the Centers for Medicare and Medicaid Services (CMS). It has been found that hospitals are routinely preventing Emergency Medical Services (EMS) staff from transferring patients from their ambulance stretchers to a hospital bed or gurney.

It is important to remind you that patients are not to be left on an EMS stretcher, with EMS staff in attendance, for an extended period of time. This practice may result in a violation of the Emergency Medical Treatment and Labor Act (EMTALA). Also, it raises serious concerns for patient care and emergency services in California’s communities. This practice may result in a violation of State Law, HSC 1317 et seq. This practice may also result in a violation of 42 CFR 482.55 which reads as follows:

**482.55. Condition of participation: Emergency services.**

The hospital must meet the emergency needs of patients in accordance with acceptable standards of practice. (a) Standard: Organization and direction. If emergency services are provided at the hospital – (1) The services must be organized under the direction of a qualified member of the medical staff; (2) The services must be integrated with other departments of the hospital; (3) The policies and procedures governing medical care provided in the emergency service or department are established by and are a continuing responsibility of the medical staff.

(b) Standard: Personnel. (1) The emergency services must be supervised by a qualified member of the medical staff; (2) There must be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility.

All hospitals have an obligation as soon as a patient “presents” at a hospital emergency department or on hospital property as defined by 42 CFR 489.24(b) to treat or examine a patient if the patient makes a request for a treatment or examination of an emergency medical condition. The language referenced above reads in part as follows:

**482.24(b) Special responsibilities of Medicare hospitals in emergency cases. Definitions. As used in this sub-part.**

**Capacity** means the ability of the hospital to accommodate the individual requesting examination or treatment of the transferred individual. Capacity encompasses such things as numbers and availability of qualified staff, beds and equipment and the hospital’s past practices of accommodating additional patients in excess of its occupancy limits.

**Comes to the emergency department** means, with respect to an individual requesting examination or treatment that the individual is on the hospital property. For purposes of this section, “property” means the entire main hospital campus as defined in §413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, as well as any facility or organization that is located off the main hospital campus but has been determined under §413.65 of this chapter to be a department of the hospital. The responsibilities of hospitals with respect to these off-campus facilities or organizations are described in paragraph (i) of this section. Property also includes ambulances owned and operated by the hospital even if the ambulance is not on hospital grounds. An individual in a nonhospital-owned ambulance on hospital property is considered to have come to the hospital’s emergency department. An individual in a nonhospital-owned ambulance off hospital property is not considered to have come to the hospital’s emergency department even if a member of the ambulance staff contacts the hospital by telephone or telemetry communications and informs the hospital that they want to transport the individual to the hospital for examination and treatment. In this situation the hospital may deny access if it is in “diversionary status”, that is, it does not have the staff or facilities to accept any additional emergency patients. If, however, the ambulance staff disregards the hospital’s instructions and transports the individual onto hospital property, the individual is considered to have come to the emergency department.

When a patient arrives via EMS, they meet this requirement when the EMS personnel request treatment from hospital staff. The hospital must provide a screening examination to determine if an emergency medical condition exists. If an emergency medical condition exists, the hospital must provide stabilizing treatment to resolve the patient’s emergency medical condition. All hospitals have an obligation to see patients, presented by EMS or otherwise, as determined by the hospital under the circumstances and in accordance with acceptable standards of care.

EMTALA obligations apply to a hospital that has accepted a transfer of a patient from another hospital when the transfer is appropriate. An appropriate transfer would be when the transferring hospital provides medical treatment that minimizes the risks to a patient's health and the receiving hospital has the capability and capacity to provide appropriate medical treatment and has agreed to accept transfer under 42 CFR 489.24(e)(2). This language in part reads as follows:

**489.24(e)(2) Special responsibilities of Medicare hospitals in emergency cases. Definitions. As used in this sub-part.**

***Recipient hospital responsibilities.*** A participating hospital that has specialized capabilities or facilities (including, but not limited to, facilities such as burn units, shock-trauma units, neo-natal intensive care units, or (with respect to rural areas) regional referral centers may not refuse to accept from a referring hospital within the boundaries of the United States an appropriate transfer of an individual who requires such specialized capabilities or facilities if the receiving hospital has the capacity to treat the individual.

The expectation is that the receiving hospital has the capacity to accept the patient at the time of the transfer. It is a violation of EMTALA if a hospital delays a medical screening examination or stabilizing treatment of a patient who is transferred from a hospital by not allowing EMS staff to leave the patient.

The CDPH realizes that there is crowding in many hospital emergency departments. There needs to be a different solution to this problem as "parking" patients in hospitals and refusing to release EMS equipment or personnel puts patients' health at risk and jeopardizes the ability of the EMS staff to provide their important services to California's communities.

The CDPH wants to emphasize that these regulations have been in effect and this should serve as an immediate reminder. As a result of these regulations, hospital policy and procedure changes should be made accordingly.

Sincerely,

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

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