



**Ref: S&C-02-06**

**DATE:** November 29, 2001

**FROM:** Director  
Survey and Certification Group  
Center for Medicaid and State Operations

**SUBJECT:** Hospital Capacity-EMTALA

**TO:** Associate Regional Administrator, DMSO

The purpose of this program memorandum is to clarify the Centers for Medicare and Medicaid Services (CMS) policy regarding EMTALA requirements for a sending hospital when it lacks capacity and EMTALA responsibilities of the recipient hospital for accepting patients under those circumstances.

1. Requirements for a Sending Hospital When it Lacks Capacity

When a hospital determines that a patient who has “come to the emergency department” (as defined at 42 C.F.R. § 489.24 (b)) has an emergency medical condition, the hospital must provide the patient, within the capabilities of the staff and facilities available at the hospital either such further medical examination and such treatment as required to stabilize the medical condition, or an appropriate transfer to another facility.

If an individual at a hospital has an emergency medical condition that has not been stabilized, the hospital may not transfer the individual unless (i) the transfer is an appropriate transfer according to 42 C.F.R. 489.24 (d) and (ii) the individual (or legal responsible person acting on the individual’s behalf) requests the transfer after being informed of the hospitals obligations under EMTALA and of the risk of the transfer.

In determining the capability and capacity available at the hospital the surveyor would assess the following criteria as outlined in the SOM, Appendix V, Page V-23:

“Capabilities of a medical facility means that there is physical space, equipment, supplies, and services that the hospital provides (e.g., surgery, psychiatry, obstetrics, intensive care, pediatrics, trauma care).

Capabilities of the staff of a facility means the level of care that the personnel of the hospital can provide within the training and scope of their professional licenses.

The capacity to render care is not reflected simply by the number of persons occupying a specialized unit, the number of staff on duty, or the amount of equipment on the hospital's premises. Capacity includes whatever a hospital customarily does to accommodate patients in excess of its occupancy limits (§489.24 (b)). If a hospital has customarily accommodated patients in excess of its occupancy limits by whatever means (e.g. moving patients to other units, calling in additional staff, borrowing equipment from other facilities) it has, in fact, demonstrated the ability to provide services to patients in excess of its occupancy limits."

During the investigation of a complaint, investigative fact-finding would determine whether or not the patient should have been transferred, and, if so, whether it was an appropriate transfer. Upon investigation, if the facts support the hospital's determination that it could not accommodate the patient, taking into consideration the hospital's customary measures when patient demand exceeds normal capacity, CMS would not likely find an EMTALA violation as long as the patient was transferred according to the requirements at 42 C.F.R. 489.24 (d).

## 2. Recipient Hospital Responsibilities

A recipient hospital is obligated to accept a transfer request if a patient is in need of specialized capabilities offered by the recipient hospital and the recipient hospital has the capacity to receive the patient. Even if both the sending and the receiving hospitals have similar capabilities and facilities, a patient may require service beyond the capability of the sending hospital [at the time of the transfer], if these services are available at the recipient hospital. In that instance, the recipient hospital is obligated to accept the patient from the sending hospital.

The interpretive guidelines (SOM, Appendix V, page V-34) are clear that a (recipient) hospital has to accept the patient only if:

"the patient requires the specialized capabilities of the hospital in accordance with this section. If the transferring hospital wants to transfer a patient because it has no beds or is overcrowded, but the patient does not require any specialized capabilities, the receiving...hospital is not obligated to accept the patient.

If the patient required the specialized capabilities of the intended receiving...hospital, and the hospital had the capability and capacity to accept the transfer but refused, this requirement has been violated".

After gathering the facts, the surveyor should be able to determine if the patient required the services of the specialized hospital. If the patient required the specialized services that the hospital offers, the hospital has an EMTALA obligation to accept the transfer in accordance with 42 C.F.R. §489.24 (e).

This clarification will be added to the SOM, Appendix V the next time it is revised. Please share additional copies of this memorandum with your states.

If you have further questions, please contact Doris M. Jackson of my staff at (410) 786-0095.

*/s/*  
Steven A. Pelovitz