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Some EMTALA Surveys of MSEs Go Too Far, Experts Say; CMS: MSEs Are Also About Quality

By Nina Youngstrom

Emergency Medical Treatment & Labor Act (EMTALA) reviews at some hospitals have reportedly gone a little too far with respect to medical screening exams (MSEs), as state surveyors question patient care instead of simply checking whether they were performed appropriately, experts say. Although patient safety is paramount, EMTALA has a specific goal—to ensure patients receive emergency care until they’re stabilized or admitted to the hospital regardless of their ability to pay—and other laws and agencies address quality of care.

“EMTALA was written to make sure we didn’t turn people away for payment reasons. It wasn’t about the quality of care necessarily,” according to the compliance officer at one health system. “To me, there has been a drift away.” Hospitals in her health system have had EMTALA reviews where state surveyors, in her opinion, pushed the MSE envelope.

The scope of the MSE under EMTALA as described in regulations and CMS instructions to state surveyors, who review compliance on behalf of CMS, is straightforward. The regulation requires hospitals to perform an appropriate MSE to determine whether an emergency medical condition exists “within the capability of the hospital’s emergency department.” Hospitals also have to decide which clinicians are qualified to perform MSEs, with formal approval from the governing body.

And yet, the compliance officer says, it seems like surveyors are “Monday morning quarterbacking.” For example, if patients wind up diagnosed with pneumonia, the surveyors question why the physician didn’t order X-rays and EKGs after the MSE. “You are telling physicians how to practice medicine,” says the compliance officer, who prefers not to be identified.

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