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Circular Letter: DHCQ – 11-01-544

TO: Chief Executive Officers, Massachusetts Private Psychiatric Hospitals
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FROM: John Auerbach, Commissioner, Department of Public Health
Alice Bonner, Ph.D., R.N., Director, Bureau of Health Care Safety & Quality, DPH
Lizbeth Kinkead, Director of Licensing, Department of Mental Health

SUBJECT: Hospital Obligations under the Emergency Medical Treatment and Labor Act (EMTALA) related to Behavioral Health Patients

DATE: January 14, 2011

The purpose of this letter is to clarify the applicability of federal Emergency Medical Treatment and Labor Act (EMTALA) requirements on accepting transfers of patients in need of inpatient psychiatric services from acute care hospital Emergency Departments (EDs) to private psychiatric hospitals and acute care hospitals with inpatient psychiatric units.

EMTALA sets out requirements that all Medicare-participating hospitals must meet. These requirements are defined in the federal regulation (42 CFR §489.20(l), (m), (q) and (r) and 489.24) and through the Centers for Medicare and Medicaid Services (CMS) State Operations Manual (SOM) Appendix V - Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases (Rev. 60, issued July 16, 2010).

Under the applicable EMTALA regulations, "a Medicare participating hospital that has specialized capabilities or facilities... 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." (42 CFR § 489.24(f))

The SOM further clarifies the regulation as follows:

“This requirement to accept an appropriate transfer applies to any Medicare-participating hospital with specialized capabilities, regardless of whether the hospital has a dedicated emergency department. In other words, while some obligations under EMTALA apply only to hospitals that have a dedicated emergency department, e.g., requirements related to providing a medical screening examination, the EMTALA recipient hospital obligation can also apply to hospitals that do not have a dedicated emergency department. For example, if an individual is found to have an emergency medical condition that requires specialized psychiatric capabilities, a psychiatric hospital that participates in Medicare and has capacity is obligated to accept an appropriate transfer of that individual. It does not matter if the psychiatric hospital does not have a dedicated emergency department.” (SOM Appendix V, Tag A-2411/C-2411)

The EMTALA regulations define an Emergency Medical Condition (EMC) as "a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, *psychiatric disturbances* and/or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in (i) Placing the health of the individual ... in serious jeopardy; (ii) Serious impairment to bodily functions; or (iii) Serious dysfunction of any bodily organ or part" [(42 CFR § 489.24(b) (definitions)] (emphasis supplied).

For the purposes of EMTALA, an individual with a psychiatric disturbance should not be treated differently than any other individual who presents to an ED with an EMC. That is, if an individual is determined by a qualified medical professional to be dangerous to him or herself or others by reason of mental illness, that individual would be considered to have an EMC and therefore is protected under EMTALA.

As explained above, EMTALA applies to any Medicare-participating hospital with specialized capabilities and capacity to stabilize the Emergency Medical Condition. CMS has interpreted *capability* of a medical facility to mean that there is physical space, equipment, supplies, and specialized services that the hospital provides (e.g., surgery, psychiatry, obstetrics, intensive care, pediatrics, trauma care) (SOM Appendix V, Tag A-2407/C-2407). Any hospital licensed as a psychiatric hospital or as an acute care hospital licensed to operate a psychiatric unit is considered to have specialized capabilities for the treatment of patients with psychiatric conditions or disturbances.

In addition, the EMTALA regulations define the *capacity* of the hospital to mean,

“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.” (42 CFR § 489.24(b) (definitions))

CMS has therefore clarified that EMTALA prohibits a Medicare-participating hospital that has specialized psychiatric capabilities or facilities -- including acute care hospitals with psychiatric units or private psychiatric hospitals -- from refusing to accept an appropriate transfer from another hospital of an individual with an unstabilized psychiatric EMC. (42 CFR 489.24(f)) This assumes that, in addition to its specialized capabilities to treat psychiatric patients, the receiving hospital not only has the *capacity* to treat the individual, but also that the transferring, i.e. referring, hospital lacks specialized psychiatric capability or capacity. (SOM Appendix V, Tag A-2411/C-2411).

“Stabilized” with respect to an EMC means that “no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility” (42 CFR § 489.24(b)) The use of chemical or physical restraints does not necessarily result in the stabilization of the psychiatric EMC. The CMS Interpretive Guidelines state: “The administration of chemical or physical restraints for purposes of transferring an individual from one facility to another may stabilize a psychiatric patient for a period of time and remove the immediate EMC but the underlying medical condition may persist and if not treated for longevity the patient may experience exacerbation of the EMC. Therefore, practitioners should use great care when determining if the medical condition is in fact stable after administering chemical or physical restraints.” (SOM Appendix V, Tag A-2407/C-2407 and A-2409/C-2409) After stabilizing the individual’s EMC or admitting the individual for inpatient care, the hospital no longer has an EMTALA obligation. (SOM Appendix V, Tag A-2407/C-2407 and A-2409/C-2409)

If the hospital cannot stabilize the individual’s psychiatric EMC, the hospital must initiate an “appropriate transfer” of the individual to another hospital, and the transferring physician must certify that the medical benefits of the transfer outweigh the risks. A transfer may also be made at the request of the individual. (Id & 42 CFR § 489.24(e) and SOM Appendix V, A-2409/C-2409)

As a reminder, a hospital may not delay the provision of a medical screening exam (MSE), necessary stabilizing treatment or an appropriate transfer in order to inquire about the individual’s insurance or payment status, or to seek authorization from the individual’s insurer for screening or stabilization services. A hospital may inquire about insurance status, as long as doing so does not delay screening, necessary stabilizing treatment, or an appropriate transfer. (42 CFR § 489.24(d)(4)) In the case of an individual with an EMC, once the hospital has conducted the MSE and has initiated stabilizing treatment, it may seek authorization for all services from the patient’s insurer, again, as long as doing so does not delay an MSE, stabilizing treatment or an appropriate transfer. (SOM Appendix V, Tag-2406/C-2406 42 CFR § 489.24(a)(1)(i) and Tag 2408/C-2408 42 CFR § 489.24(d)(4)). A receiving hospital may violate EMTALA if it delays acceptance of the appropriate transfer of an individual pending receipt or verification of the individual’s insurance status or prior authorization requirement of such insurance. (SOM Appendix V, Tag 2408/C-2408 42 CFR § 489.24(d)(4)).

If you have any questions about this memo, please contact Nancy Murphy in the DPH Bureau of Health Care Safety and Quality at Nancy.Murphy2@massmail.state.ma.us. Thank you.