DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-12-25
Baltimore, Maryland 21244-1850

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Center for Medicaid and State Operations/Survey and Certification Group

MAY 5 2009

Richard Alcorta, MD, FACEP
President
Maryland Chapter
American College of Emergency Physicians
1221 Cathedral Street
Baltimore, MD 21201

Dear Dr. Alcorta:

Thank you for your letter of March 19, 2009 concerning alleged delays in transfer from general acute care hospital emergency departments to psychiatric hospitals that Medicare beneficiaries may experience in Maryland while the recipient psychiatric hospital awaits Medicare lifetime reserve days information.

I will respond to your specific questions in turn:

1. **Does CMS believe that this practice of psychiatric hospitals is consistent with the Medicare Conditions of Participation, EMTALA, or other laws and regulations?**

Emergency Medical Treatment and Labor Act (EMTALA)

In brief, the practice as described would not be consistent with pertinent EMTALA regulations at 42 CFR 489.24(f) governing the responsibilities of a Medicare-participating hospital with specialized capabilities, assuming that the individual awaiting transfer from the hospital emergency department had an unstabilized emergency medical condition that required the specialized capabilities of another hospital with the capability to provide inpatient psychiatric care. The pertinent regulation states:

> (f) *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, neonatal intensive case units, or, with respect to rural areas, regional referral centers (which, for purposes of this subpart, mean hospitals meeting the requirements of referral centers found at §412.96 of this chapter)) 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.
>
> (1) The provisions of this paragraph (f) apply to any participating hospital with specialized capabilities, regardless of whether the hospital has a dedicated emergency department.

Please note that in addition the EMTALA statutory and regulatory definition of "stabilized" is different than the ordinary clinical use of this term. The regulation at 42 CFR 489.24(b) defines "stabilized" as follows:

> *Stabilized* means, with respect to an "emergency medical condition" as defined in this section under paragraph (1) of that definition, 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 or, with respect to an "emergency medical condition" as defined in this section under paragraph (2) of that definition, that the woman has delivered the child and the placenta.

The acceptance by a recipient hospital of an appropriate transfer under EMTALA of an individual with an unstabilized emergency medical condition may not be conditioned upon or delayed in order to obtain approval from an insurance company, Medicare lifetime reserve days information, or any other extraneous information. So long as the hospital with the specialized services has the capacity to treat the individual, it may not refuse an appropriate EMTALA transfer. This requirement applies to *all* hospitals with specialized capabilities, not just those that have dedicated emergency departments. While it is important to note that the enforcement of the EMTALA requirements is a complaint-based process and the determination of any violations would be dependent on the facts of the case, a psychiatric hospital that employed such a policy might find itself at risk for citation of an EMTALA violation if the practice was confirmed through an investigation.

Please also note that the Centers for Medicare & Medicaid Services (CMS) requires specific information about the policies and practices of a specific hospital in order to conduct an EMTALA investigation. The types of broad allegations about a class of providers in the State of Maryland contained in your letter are insufficiently specific to support an investigation. I would encourage any of your members who are alleging that the practices you describe are occurring to file a specific complaint with the Maryland State Survey Agency. Complaints may be submitted to:

Office of Health Care Quality
Maryland Department of Health and Mental Hygiene
Spring Grove Hospital Center
Bland Bryant Building
55 Wade Avenue
Catonsville, MD 21228
(410) 402-8000 or Toll free (877) 402-8218
http://www.dhmh.state.md.us/ohcq

Hospital Conditions of Participation

The alleged practice would not be in violation of the Medicare Hospital Conditions of Participation, which do not establish any requirements governing acceptance of transfers.

Other Laws/Regulations

Depending on the way in which the alleged policy was designed, if this type of pre-admission insurance screening applied solely to Medicare beneficiaries, the hospital might be in violation of the regulations at 42 CFR 489.53(a)(2):

> (a) *Basis for termination of agreement with any provider.* CMS may terminate the agreement with any provider if CMS finds that any of the following failings is attributable to that provider:
>
> (2) It places restrictions on the persons it will accept for treatment and it fails either to exempt Medicare beneficiaries from those restrictions or to apply them to Medicare beneficiaries the same as to all other persons seeking care.

Consequences of Noncompliance

Violation of the EMTALA and provider agreement regulations described above would place the hospital at risk of termination of its Medicare provider agreement, unless it corrected its deficient practices in a timely manner.

2. If not, would CMS be able to so inform psychiatric hospitals in Maryland?

As previously indicated, while CMS investigates specific complaints we would not develop an educational outreach targeted to a particular class of providers in a particular State on the basis of a broad, unsubstantiated allegation. However, Medicare-participating providers are expected to know and comply with applicable regulatory requirements. These requirements are readily available via the CMS Web site at www.CMS.gov, which provides links to regulations and enforcement guidance pertaining to Medicare-certified health care facilities. In addition, my office periodically releases Survey and Certification memos to Regional Offices, State Survey Agencies and other stakeholders that reflect updates in CMS policy. The S&C memo 09-26, dated March 6, 2009 (which is attached to this document) specifically addresses the responsibilities of recipient hospitals under EMTALA. All hospitals and other health care organizations would be well advised to review these resources to keep themselves abreast of CMS' requirements.

3. Which CMS entity (i.e., the regional office, your office, etc?)

As indicated above, complaints about a specific hospital should be addressed to the Maryland State Survey Agency.

If you have further questions about the generic regulatory requirements, please contact Frances Jensen, MD, at frances.jensen@cms.hhs.gov. Once again, thank you for your inquiry.

Sincerely,

Thomas E. Hamilton
Director

Attachment

cc: Region 3, Survey and Certification
Maryland State Survey Agency

Maryland Chapter American College of Emergency Physicians

March 19, 2009

Mr. Thomas Hamilton
Director, Survey and Certification Group
Centers for Medicare and Medicaid Services
7500 Security Blvd., S2-12-25
Baltimore, MD 21244

Dear Mr. Hamilton,

The Maryland Chapter of the American College of Emergency Physicians represents over 450 physicians in Maryland and has represented organized emergency providers as the specialty's society since 1976.

In Maryland, Medicare beneficiaries who require psychiatric hospitalization following an emergency department (ED) evaluation are often forced to remain in the ED overnight and even all weekend unnecessarily, even when an appropriate bed is available and waiting at a psychiatric hospital. This unfortunate situation occurs because Maryland's psychiatric hospitals require EDs to provide them with beneficiaries' lifetime reserve and psychiatric lifetime reserve days before agreeing to admit them. As you are aware, this information can only be readily obtained via the HIQA database, which has limited hours of availability -- hence the delays.

Medicare beneficiaries are among EDs' most vulnerable patients, and as such this situation is unacceptable and against good public policy. It contributes to emergency department overcrowding at a time when we can least afford it.

Our questions are:
1. Does CMS believe that this practice of psychiatric hospitals is consistent with Medicare Conditions of Participation, EMTALA, or other laws and regulations?
2. If not, would CMS be able to so inform psychiatric hospitals in Maryland?
3. Which CMS entity (i.e. the regional office, your office, etc.?)

Very truly yours,

Richard Alcorta, MD, FACEP
President
Maryland Chapter
American College of Emergency Physicians

cc. Ms. Jeannie Miller
Deputy Director, Clinical Standards Group
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