

## Insights

### EMTALA Turns 30; CMS Enforcement and New Rules Require Hospitals' (and Physicians') Attention

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Without surprise, not many hospital providers joined in the celebration of EMTALA's recent 30<sup>th</sup> anniversary. A lack of shared joy notwithstanding, EMTALA remains as rigorous, nuanced, and enforced as when it was first enacted as part of the 1986 COBRA legislation.

The broad requirements of EMTALA appear fairly straightforward. In essence, EMTALA requires a Medicare-participating hospital to provide medical screening examinations to individuals who come to the hospital's emergency department and request examination or treatment for a medical condition. EMTALA further provides that, if the individual has an emergency medical condition, the hospital is obligated to stabilize that condition or to arrange for an appropriate transfer to another medical facility where stabilizing treatment can be provided. EMTALA also requires hospitals with specialized capabilities or facilities to accept appropriate transfers of individuals from other hospitals. Finally, EMTALA creates obligations for physicians responsible for the examination, treatment, or transfer of an individual in a participating hospital.

In spite of its seeming simplicity, the devil lies in EMTALA's details. Maintaining compliance with existing EMTALA requirements is daunting for nearly every hospital provider. Recent EMTALA changes make compliance all the more challenging...while simultaneously increasing the financial risk for non-compliance. The changes to EMTALA were included in OIG's December 2016 Final Rule,[1] and ultimately enact three significant measures, as detailed below.

#### ***Inflation-Adjusted EMTALA Penalties***

A per-EMTALA violation increase from \$50,000 to \$103,139 (for both hospitals with more than 100 beds and individual physicians; hospitals with under 100 beds see penalties increase from \$25,000 to \$51,750). The dramatic increase reflects that the penalties were left untouched after their 1987 enactment, meaning that an EMTALA fine levied in CY 2017 will cost a hospital provider twice what a CY 2016 EMTALA fine imposed.[2]

#### ***EMTALA Liability Extends to "On-Call" Physicians***

Liability for violations of EMTALA extends to "on-call physicians" at hospitals with specialized capabilities, as OIG interprets that these specialists are within EMTALA's definition of a "responsible physician." As detailed in the Final Rule, OIG does not view this measure as an expansion of EMTALA, but simply a clarification of the individual

practitioners who must comply with EMTALA requirements.

***An Inducement for Self-Disclosure of EMTALA Violations?***

Once a potential violation has been identified, EMTALA enforcement initiates with a decision by CMS to investigate a hospital for EMTALA compliance. If, after survey, the provider's CMS Regional Office determines that was an in-fact violation, then EMTALA requires that CMS begin the process of terminating that hospital's Medicare provider agreement. OIG's Final Rule suggests that if hospitals identify, prepare a corrective action plan, and self-disclose EMTALA violations, then these measures may mitigate both monetary penalties and potential Medicare enrollment sanctions facing the violating hospital and/or individual physicians. This self-reporting option is new to the EMTALA legislation. Before exercising this new option, it is imperative that a provider understand the complexities associated with self-reporting, including all potential outcomes of doing so.

In light of the above changes, compliance with the requirements of EMTALA must be a focus of both the hospital as an organization and the staff whom interacts with patients. An overwhelming volume of emergent patients encounter hospitals on a daily basis, with each instance of patient care requiring that EMTALA's standards be met.

Krieg DeVault LLP recommends its Medicare-certified clients be confident that their policies and procedures address all aspects of EMTALA. Our health care practice group members can provide expert guidance regarding your organization's current EMTALA compliance, helping to identify issues or concerns resolved for other health care provider clients. Should you have any questions regarding EMTALA compliance, please contact Tom Hutchinson at (317) 238-6254 or [thutchinson@kdlegal.com](mailto:thutchinson@kdlegal.com).

[1] 81 FR 88334, 88348 (December 7, 2016).

[2] 45 CFR 102.3.