

Department of Health & Human Services
Centers for Medicare & Medicaid Services
Atlanta Regional Office
61 Forsyth St., Suite. 4T20
Atlanta, Georgia 30303-8909



February 6, 2013

Diane Paschal
Director, Corporate Compliance
South Carolina Hospital Association
1000 Center Point Road
Columbia, SC 29210

Dear Ms. Paschal,

Thank you for your inquiry of January 18, 2013 regarding proposed notices that hospitals have considered posting in ED waiting rooms or ED patient examination rooms regarding "Prescribing Pain Medication in the Emergency Department".

The federal EMTALA statute (Sec 1867 of the Social Security Act, 42 U.S.C.1395dd) states that "In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this title) comes to the emergency department and a request is made ...for examination or treatment of a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department... to determine whether or not an emergency medical condition (within the meaning of subsection (e) (1) exists.

(e)(1) The term "emergency medical condition" means- (A) a medical condition manifesting itself by acute symptoms of sufficient severity **(including severe pain) etc.** (emphasis added).

42 CFR 489.24 (b) defines "Emergency medical condition" as (1) A medical condition manifesting itself by acute symptoms of sufficient severity **(including severe pain, psychiatric disturbances and/or symptoms of substance abuse)** (emphasis added).

42 CFR 489.24 (d) (4) (iv) states that Hospitals may follow reasonable registration process.... However **"Reasonable registration processes may not unduly discourage individuals from remaining for further evaluation"**. (emphasis added). Furthermore, hospitals should not deny emergency services based on diagnosis, financial status, race, color, national origin, or disability (State Operations Manual Appendix V). Such cases will additionally be referred to the HHS Office of Civil rights (OCR) for investigation of discrimination. CMS Interpretive guidelines (SOM Appendix V) state that although patients may leave the emergency department of their own free will, they should not leave based on a "suggestion" by the hospital or through coercion.

Accordingly, the language regarding "Prescribing Pain Medication in the Emergency Department" which you have provided, and any similar language which the hospital might choose to post in patient waiting rooms or treatment rooms might be considered to be coercive or intimidating to patients who present to the ED with painful medical conditions, thereby violating both the language and the intent of the EMTALA statute and regulations.

We share your concerns and those of the provider community about the increasing prevalence of prescription drug abuse and its harmful effects. We understand the tendency of persons seeking pain medication and controlled substances for non-legitimate purposes to approach physicians, emergency departments and other health care providers for access to these drugs. Nevertheless, the intent of the EMTALA statute is clearly to assure that all individuals who come to the emergency department for a medical condition receive an appropriate medical screening examination to determine whether or not an emergency medical condition exists. Our concern is that some patients with legitimate medical needs and legitimate need for pain control would be unduly coerced to leave the ED before receiving an appropriate medical screening exam.


While many of the points mentioned in the information you submit are appropriate points for discussion between the patient and the physician or other health care practitioner, they should be discussed in the context of an appropriate medical screening exam rather than be posted in the ED before patients are provided an appropriate medical screening exam. Blanket statements or protocols should not supersede professional medical judgment in individual cases. After performing an appropriate medical screening exam, it is within the bounds of reasonable professional medical judgment and discretion for an appropriately licensed physician or other health care practitioner to provide or to withhold narcotic or other methods of pain control in a particular patient depending on the specific clinical circumstances.

We hope this information is helpful to you and your member hospitals.

Sincerely,



Brenda Dawkins, RN



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