EMTALA Technical Advisory Group (TAG)

Update

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Chair

- Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requires the Secretary of Health and Human Services (HHS) to establish a Technical Advisory Group (TAG) for advice concerning issues related to EMTALA regulations and implementation.

Section 945 of the MMA specifies that the EMTALA TAG-

- shall review the EMTALA regulations
- may provide advice and recommendations to the Secretary concerning these regulations and their application to hospitals and physicians
- shall solicit comments and recommendations from hospitals, physicians, and the public regarding implementation of such regulations
- may disseminate information concerning the application of these regulations to hospitals, physicians, and the public

Composition of the TAG is defined by statute.
19 members-

- Administrator of the Centers for Medicare and Medicaid Services (CMS)
- Inspector General of the Department of Health and Human Services (DHHS)
- four representatives of hospitals, including at least one public hospital
- seven practicing physicians (from the fields of emergency medicine, cardiology or cardiothoracic surgery, orthopedic surgery, neurosurgery, pediatrics or a pediatric subspecialty, obstetrics-gynecology, and psychiatry)
- two patient representatives
- two staff persons involved in EMTALA investigations from different CMS regional offices
- one representative from a State survey agency involved in EMTALA investigations
- one representative from a Quality Improvement Organization (QIO)

TAG had a 30-month lifespan

- Term ended October 1, 2007
- TAG mandated to meet at least twice per year
- Three meetings in 2005
- Two meetings in 2006
- Two meetings in 2007

- All information about the TAG (including minutes of meetings, topics discussed, related resources) is available at www.cms.hhs.gov/FACA/07_emtalatag.asp

Initial issues identified to address-On-call issues and psychiatric emergency care issues

Established three subcommittees to help define issues and perform work between meetings-

- On-Call Subcommittee (John Kuskee)
- Action Subcommittee (Julie Nelson)
- Framework Subcommittee (Charlotte Yeh)

Overview

- TAG presented final report to Secretary of HHS
- Recommendations technically go to HHS
- TAG prioritized the recommendations-CMS/HHS has acted on many of the recommendations
- Report includes all of the formal recommendations of the TAG
- In addition, the report includes the background papers developed by the Framework Subcommittee

Recommendations

- Hospitals with specialized capabilities should not be required to maintain emergency departments
- However, these hospitals are bound by the same responsibilities as facilities with dedicated emergency departments ***(adopted in 2006 IPPS final rule and regulations-Survey and Certification letter sent to implement regulations)***

Recommendations

- Permit a non-physician to certify “false labor” ***(adopted in regulation-S+C letter sent)***
- Encourage treating physician to contact the patient’s physician during evaluation
- Hospitals with specialized capabilities (as well as all other hospitals) should maintain an on-call list in accordance with statute and provider agreement
- Add FAQs to EMTALA website

Recommendations

- Replace the word “certifies” with “determines and documents” in the definition of labor in the interpretive guidelines (IGs)
- List of recommendations related to on-call response of the physician, to be revised in the IGs
- Promote the concept of “community call”- hospital still has its own EMTALA responsibilities

Recommendations

- Clarify a hospital's obligation under EMTALA to receive a patient who arrives by ambulance ***(S+C letter)***
- Expand the waiver for EMTALA obligations during times of emergency (government and hospital declared)
- Amend the IGs to clarify that once a patient is stabilized, the hospital and physician have no follow-up obligations

Recommendations

- Promote the utilization of telemedicine, when appropriate, to screen and stabilize patients in the emergency department
- If a hospital offers a service to the public, it should be available through on-call coverage
- The hospital and medical staff should periodically review their on-call coverage with defined criteria, including backup plans for coverage when needed

Recommendations

- Many recommendations about EMTALA education for hospitals, physicians, and patients
- Many recommendations regarding EMTALA enforcement, including an appeals process, enhanced involvement of the QIO (Quality Improvement Organization), and intermediate sanctions

Recommendations

- CMS should establish a methodology for improved data collection regarding EMTALA citations and violations
- CMS should greatly improve the education and training of its surveyors in this area
- CMS should establish policies and procedures to enhance standardization of citation and enforcement in all the Regions

Recommendations

- Clarify that EMTALA does not apply when a patient develops an emergency medical condition (EMC) after being admitted to a hospital
- When a patient covered by EMTALA is admitted as an inpatient to a hospital and that patient's original EMC remains un-stabilized, the obligation of a receiving hospital that has specialized capabilities to stabilize the patient's EMC is not altered ***(low priority)***

Recommendations

- CMS should remove the current separate guidance on psychiatric EMCs
- CMS should generate specific examples of psychiatric EMCs
- CMS should describe that a Medical Screening Examination (MSE) for a psychiatric patient should attempt to determine whether a person is “gravely disabled”, “suicidal”, or “homicidal”
- These determinations do not necessarily mean that the psychiatric patient has an EMC
- CMS should promote the use of community resources to care for psychiatric patients

Recommendations

- Education should be enhanced for all providers concerning the care of psychiatric patients
- CMS should allow for the use of contracted services to care for psychiatric patients
- Emphasize that hospitals with specialized capabilities in the behavioral health area should be required to accept appropriate patients

Recommendations

- The use of physical or chemical restraints does not by itself stabilize an EMC- EMTALA obligations still apply until it is determined that the EMC is appropriately stabilized
- HHS should review its position on community protocols in consultation with state agencies and others in the area of mental health

Recommendations

- CMS should clarify that an EMC does not need to be resolved to be considered stabilized for the purpose of discharge home, provided that within reasonable clinical confidence, it is determined that the continued care and workup could be performed as an outpatient (plan for appropriate follow-up)
- A hospital has no EMTALA obligation to provide definitive treatment to a patient (Medicare Conditions of Participation may apply)

Recommendations

- CMS should allow hospitals more flexibility in the determination of a QMP (Qualified Medical Personnel) in accordance with the hospital's medical staff credentialing procedures
- CMS should revise the IGs to reflect the concept that a patient may be discharged or transferred to a non-hospital owned physician site for continuation of the MSE or stabilization of a EMC
- CMS should better define "capacity" and "capability" and insure these terms are used appropriately and consistently throughout the IGs

Recommendations

- HHS should support amending EMTALA to include liability protection for hospitals, physicians, and other licensed personnel providing care under the statute
- HHS should support amending EMTALA to include a funding mechanism for all providing care under the statute
- HHS should seek revisions to limit the private right of action for personal harm to only those circumstances in which there is no alternative route to claim liability damages

Recommendations

- CMS should develop guidance on how and when a practitioner may discuss financial matters with a patient with an EMC
- The Secretary of HHS should recognize the ongoing need for review of EMTALA legislation and the mission of the EMTALA TAG should be continued