EMTALA Panel Challenges the Rush to Transfer

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Contributing Writer

WASHINGTON — Hospitals receiving emergency transfers from other facilities are being encouraged to ensure that the move is necessary, under recommendations approved by the federal Emergency Medical Treatment and Labor Act Technical Advisory Group.

The panel approved a series of recommendations in response to concerns that hospitals are using EMTALA to justify transferring patients they should be able to treat. The technical advisory group advises the Department of Health and Human Services and the administrator of the Centers for Medicare and Medicaid Services on issues that are related to EMTALA.

The panel has collected testimony indicating that some facilities don't maintain adequate on-call coverage and thus believe that EMTALA allows them to transfer patients they can't immediately care for. Receiving hospitals are reluctant to challenge transfer requests for fear of being accused of an EMTALA violation.

The concerns were reflected in testimony received by the group. "I do think the EMTALA provisions have been an escape valve for the hospital to say, 'Well, we don't need to provide coverage because we can transfer,'" said Dr. Amos Stoll. Dr. Stoll was representing the Broward General Medical Center in Fort Lauderdale, Fla.

Dr. David Ciesla, of Washington Hospital Center, said his level I trauma center is frequently requested to accept patients who do not need the high level of care the hospital can provide. He told the panel that since 2001, the center has experienced an 80% increase in transfers to the hospital. Interfacility transfers account for one-quarter of the volume in annual trauma admissions, Dr. Ciesla explained. Half of those had only minor injuries, as defined by the National Trauma Data Bank, he added.

"In a situation where the tertiary referral centers have a finite amount of resources, these resources are increasingly used to treat patients who don't necessarily need the full spectrum of care," he said.

The danger is that the hospital may run out of capacity needed to accommodate the severely injured patients the facility is meant for, Dr. Ciesla added. Panel members and physicians are concerned that by allowing transfers of patients, EMTALA may be worsening the situation.

"Do you think that physicians who originally were thought to be regulated by the government into taking care of patients at the site of presentation ... are now gaming it? Are they using EMTALA to shift their burden, to force you docs to accept these patients?" asked panel member Dr. James Nepola, professor of orthopaedics and rehabilitation at the University of Iowa, Iowa City.

"I think that may be one of the unintended consequences," Dr. Ciesla replied.

"There's a perceived obligation on behalf of the receiving hospital to have to take that patient," panel member Dr. Mark Pearlmutter explained. "But there's nothing to encourage it the other way under EMTALA." Dr. Pearlmutter is chief of emergency medicine at Caritas St. Elizabeth's Medical Center in Boston. ■

On-Call Recommendations

Hospitals should provide on-call coverage for services they regularly offer to the community, the EMTALA technical advisory group recommended, and such a provision should be part of the act's interpretive guidelines.

The advisory panel's recommendations also call for hospital administrators and medical staff to annually develop an on-call coverage plan that evaluates a facility's services and the number and type of emergency department visits. Hospitals also should develop plans for transferring patients whose needs cannot be met, and to provide a mechanism for evaluating a facility's provision of on-call services.

If the facility does not have the capacity to provide services at a given time, the plan must include backup provisions, the recommendations stipulate. Care could be provided through the use of telemedicine, alternative staff physicians, or transfer agreements with other facilities. Regional or community coverage arrangements also could be employed, according to the advisory group.

A hospital may satisfy its on-call coverage obligations by participating in community or regional call coverage programs approved by the CMS, the panel said. It also recommended changes to the EMTALA statute's definition governing on-call obligations for hospitals.

The current EMTALA statute says call coverage should be arranged that "best meets the needs" of the community. The advisory panel suggested replacing that definition with a provision that each hospital must maintain an on-call list of physicians who can examine and stabilize patients "in accordance with the resources available to the hospital."

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