Iowa Department of
INSPECTIONS, APPEALS, & LICENSING

The Pulse
Hospital Education

December 2023

CMS Reinforces EMTALA Guidelines, Flexibilities as Hospitals Face Surges

The Department of Inspections, Appeals, and Licensing (DIAL) Health and Safety Division will address recent memorandums from Centers for Medicare and Medicaid Services (CMS) Quality Safety & Oversight (QSO) in this edition. Hospitals should review the following: QSO-24-02, QSO 24-01, and QSO 23-24.

DIAL encourages hospitals in Iowa to review QSO 24-02 and the attached fact sheet that reinforces previous guidance regarding the options hospitals may utilize to increase surge capacity in their facilities and assist in maintaining compliance with the Emergency Medical Treatment and Labor Act (EMTALA) requirements at 42 CFR 489.24 and the related requirements at 42 CFR 489.20 (l), (m), (q) and (r) when emergency departments (EDs) are experiencing extraordinary surges in demand.

CMS released QSO 24-02 to reinforce EMTALA requirements and the existing flexibilities available for hospitals experiencing an extraordinary surge in demand for ED services in anticipation of possible increases in cases of influenza, COVID-19, and RSV this fall and winter season.

CMS expects healthcare staff and surveyors (contractors, federal, state, and local) to comply with basic infection control practices to prevent and minimize the transmission of infection within these healthcare facilities while also adhering to the applicable infection control requirements for their respective provider type.

EMTALA is a federal law that requires all Medicare-participating hospitals (including critical access hospitals (CAHs)) with dedicated EDs to perform the following for all individuals who come to their EDs, regardless of their ability to pay:

- An appropriate medical screening exam (MSE) to determine if the individual has an emergency medical condition (EMC). If there is no EMC, the hospital's EMTALA obligations end. Triage is the process of sorting individuals based on their need for immediate medical treatment and is not considered to be a medical screening examination in and of itself. It is appropriate for hospital staff to triage individuals for purposes of directing them to the appropriate location of the hospital where the medical screening exam will occur, based on the hospital's triage and alternate screening protocols. If an appropriate MSE finds that there is an EMC, the hospital must: Treat and stabilize the EMC within its capability (including inpatient admission when necessary), OR provide an appropriate transfer of the individual to a hospital that has the capability and capacity to stabilize the EMC. Medical testing can detect a medical condition and confirm a diagnosis for which a treatment plan is developed.
- Drive-through testing sites that have been established for testing/screening of respiratory illness (i.e., influenza, COVID-19, RSV) alone, including on a hospital campus, do not have EMTALA implications. However, EMTALA would still apply if a patient who was seeking screening/testing for respiratory illness made a request for emergency medical treatment while on the hospital campus. Hospitals with specialized capabilities (with or without an ED) may not refuse an appropriate transfer under EMTALA if they have the capacity to treat the transferred individual.
- EMTALA ensures access to hospital emergency services; it need not be a barrier to providing care in a disaster.

Options for Managing Extraordinary ED Surges Under Existing EMTALA Requirements (No Waiver Required)

Hospitals may set up alternative screening sites on the hospital's campus.

- The MSE does not have to take place in the ED. A hospital may set up alternative sites on its campus to perform MSEs.
    - Individuals may be redirected to these sites. Whether the individual is seen at the alternate on-campus site or in the ED, they should be logged in where they are seen. Individuals do not need to first present to the ED, and if they present to the ED, may still be redirected to the on-campus alternative screening location for logging and subsequent screening/testing.
    - This is a triage function and the person providing the redirection from the ED should be qualified (e.g., an RN) to recognize individuals who are obviously in need of immediate examination or treatment in the ED. Hospital non-clinical staff stationed at other entrances to the hospital may provide redirection to the on-campus alternative screening location for individuals seeking screening/testing of respiratory illness such as influenza, COVID-19 and RSV.

- The content of the MSE varies according to the individual's presenting signs and symptoms and the capabilities of the hospital. It can be as simple or as complex as needed to determine if an EMC exists.
- MSEs must be conducted by qualified medical personnel (QMP), which may include physicians, nurse practitioners, physician's assistants, or RNs trained to perform MSEs and acting within the scope of their state Practice Act.
- Hospitals may use telehealth equipment to perform the MSE by the QMP if clinically appropriate. The QMP may be on-campus (e.g., using telehealth to self-contain) or offsite (e.g., due to staffing shortages). Either way, the QMP must be performing within the scope of their state Practice Act and approved by the hospital's governing body to perform MSEs.
- The use of telehealth equipment to provide evaluation of individuals who have not physically presented to the hospital for treatment does not create an EMTALA liability.

- The hospital must provide stabilizing treatment (or appropriate transfer) to individuals found to have an EMC, including moving them as needed from the alternative site to another on-campus department.

Hospitals may set up screening at off-campus, hospital-controlled sites.

- Hospitals and community officials may encourage the public to go to these sites instead of the hospital for screening of viral respiratory illnesses such as influenza, COVID-19, and RSV. However, a hospital may not tell individuals who have already come to its ED to go to the off-site location for the MSE.
- Unless the off-campus site is already a dedicated ED (DED) of the hospital, as defined under EMTALA regulations at 42 CFR 489.24(b), EMTALA requirements do not apply.
- The hospital should not hold the site out to the public as a place that provides care for EMCs in general on an urgent, unscheduled basis. They can hold it out as a screening/testing center for viral respiratory illness.
- The off-campus site should be staffed with medical personnel trained to evaluate individuals with viral respiratory illness.
- If an individual needs additional medical attention on an emergent basis, the hospital is required, under the Medicare Conditions of Participation, to arrange referral/transfer. Prior coordination with local emergency medical services (EMS) is advised to develop transport arrangements.

Communities may set up screening/testing clinics at sites not under the control of a hospital (such as a mall or retail parking lot).

- There is no EMTALA obligation at these sites even if hospital personnel perform the screening or testing.
- Hospitals and community officials may encourage the public to go to these sites instead of the hospital for screening of viral respiratory illness. However, a hospital may not tell individuals who have already come to its ED to go to the off-site location for the MSE until they have been provided a MSE and determined not to have an EMC.

- Communities are encouraged to staff the sites with medical personnel trained to evaluate individuals with viral respiratory illness.
- There should be protocols or a process in place to safely transport patients who arrive in medical distress and need to be admitted to the hospital, which may be as simple as calling 911.
- In preparation for a pandemic of any viral illness, the community, its local hospitals and EMS are encouraged to plan for referral and transport of individuals needing additional medical attention on an emergent basis.
- Drive-through testing sites established for COVID-19 testing purposes only do not have EMTALA implications.

Memorandum Summary of QSO 24-01-REH, Oversight of Rural Emergency Hospitals (REHs)

On Nov. 23, 2022, CMS published a final rule (87 FR 72293) that established REHs as a new Medicare provider type, effective Jan. 1, 2023, and codified the Conditions of Participation (CoPs) that REHs must meet to participate in the Medicare and Medicaid programs. The rule also established REH payment and enrollment requirements.

All REH surveys will be conducted by State Survey Agencies (SAs) for at least the first three years from the date on which the first REH has been certified.

REHs are encouraged to review QSO 24-01.

Memorandum Summary of QSO 23-24 Related to Patient Safety Work Products (PSWP), Survey Process, and Quality Assessment and Performance Improvement (QAPI) Survey Documents

Survey activities to assess compliance with the regulations for QAPI programs require surveyors to review the facility's documentation to demonstrate the ongoing and sustainable actions taken to provide for patient safety and prevent adverse events.

PSWP does not include the information to be disclosed to comply with CMS' Condition of Participation (CoP) or Condition for Coverage (CfC) requirements. Facilities may choose to identify certain documents as PSWP that cannot be disclosed and used in the assessment of compliance but are still required to provide alternate documentation to demonstrate compliance with the CoPs.

Hospitals are encouraged to review QSO 23-24.

Hospital License Renewals

Hospital license applications for 2024 are being processed and will be sent to each facility prior to the expiration date. Contact us at the appropriate email address below if you have questions on your renewal.

For license applications: Lori Brown at lori.brown@dia.iowa.gov

For other inquiries: Hema Lindstrom, Medicare services manager, acute and continuing care, at hema.lindstrom@dia.iowa.gov

---

DIAL Has a New Address

The Iowa Department of Inspections, Appeals, and Licensing's address has changed. Please update your records.

Iowa Department of Inspections, Appeals, and Licensing
Health and Safety Division
6200 Park Ave., Suite 100
Des Moines, Iowa 50321
