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Review new guidance regarding patient rights

DIAL is committed to helping hospitals find ways to advance patient-centered care. Our approach is intended to provide comprehensive education to improve patient outcomes.

In response to growing awareness of patients rights when in the emergency room, DIAL is encouraging hospitals to review the updated guidance regarding informed consent, including the new guidance addressed in this newsletter. It's crucial to stay informed about these trends as we continue to support and enhance our healthcare system.

How can we improve care?

Although [QSO-24-10 - Hospitals](#) was released April 10, 2024, Centers for Medicare and Medicaid Services (CMS) recently encouraged state agencies to remind hospitals of the revisions and clarifications to Hospitals Interpretive Guidelines for Informed Consent.

In addition, when patients are anesthetized for examinations, hospitals should review their informed consent obligation prior to allowing practitioners or supervised medical, advanced practice provider, or other applicable students to perform training- and education-related examinations outside the medically necessary procedure.

- Surveyors must ensure that a hospital's patient informed consent policy and process, as well as its informed consent forms, contain elements and information that allow for a patient, or his or her representative, to make fully informed decisions about their care.
- CMS recognizes that these patient exams are often conducted as part of the vital skills clinical students must obtain during their training and education.
- Following is the revised guidance for informed consent (new guidance in bold italics), and in both instances there is written documentation of consent for any examinations.
 - Whether ***practitioners*** other than the operating practitioner, including, but not limited to, ***other physicians***, residents, ***advanced practice providers, and medical and other applicable students (such as nurse practitioner and physician assistant)***, will be performing important tasks related to the surgery, ***or examinations or invasive procedures for educational and training purposes***, in accordance with the hospital's policies. Important surgical tasks include: opening and closing, dissecting tissue, removing tissue, harvesting grafts, transplanting tissue, administering anesthesia,

implanting devices, and placing invasive lines. *Examinations or invasive procedures conducted for educational and training purposes include, but are not limited to, breast, pelvic, prostate, and rectal examinations, as well as others specified under state law.*

- *A written consent form is required for patients undergoing anesthesia procedures, but patients with the ability to verbally affirm consent for procedures that do not require anesthesia should have their medical record reflect that consent was given. In both instances there is written documentation of consent for any examinations.*
- CMS revised the interpretive guidance in the [State Operations Manual, Appendix A](#) for hospitals at tag A-0955 (issued April 19, 2024) under the example of a properly executed and well-designed informed consent form, as well as the hospital's policy and process for informed consent.

Patient rights when in the emergency room and posted signage

On August 14, 2024, CMS released [QSO 24-17-EMTALA](#). The Emergency Medical Treatment Labor Act (EMTALA) QSO 24-17 addresses the following:

- CMS regulations require Medicare-participating hospitals to post signage outlining patients' rights under EMTALA in the emergency department and areas where patients will be examined or treated, or wait to be examined or treated, for emergency medical conditions (EMCs).
- CMS is releasing updated model signage that hospitals may use to meet this obligation.

CMS released a new poster for hospitals to display for patients to know their EMTALA rights. The poster includes information about patient rights through EMTALA and how to file a complaint if patients believe their rights have been violated. EMTALA gives everyone in the U.S. these protections, and it helps prevent any hospital emergency department that receives Medicare funds (which includes most U.S. hospitals) from refusing to treat patients.

Patients have these protections in emergency rooms:

1. An appropriate medical screening exam to check for an EMC, and if they have one,
2. Treatment until their emergency medical condition is stabilized, or
3. An appropriate transfer to another hospital if they need it

Federal laws help protect patients from unfair treatment and discrimination. Because of EMTALA, patients can't be denied a medical screening exam or treatment for an emergency medical condition based on:

- If they have health insurance or not.
- If they can pay for treatment.
- Their race, color, national origin, sex, religion, disability, or age
- If they aren't a U.S. citizen.

View the EMTALA posters in the "[Downloads](#)" section at the bottom of the page. CMS has not determined a size requirement for the posters at this time.

To meet the signage requirements at [§489.20\(q\)\(1\) and \(2\)](#) which reference EMTALA, see the Interpretive Guidelines below: Tag [A-2402/C-2402](#) (effective/implemented on May 29, 2009).

In the case of a hospital as defined in Section 489.24 (b):

(1) To post conspicuously in any emergency department or in a place or places likely to be noticed by all individuals entering the emergency department, as well as those individuals waiting for examination and treatment in areas other than traditional emergency department (that is, entrance, admitting area, waiting room, treatment area) a sign (in a form specified by the Secretary) specifying the rights of individuals under section 1867 of the Act with respect to examination and treatment of emergency medical conditions and women in labor; and

(2) To post conspicuously (in a form specified by the Secretary) information indicating whether or not the hospital or rural primary care hospital (e.g., critical access hospital) participates in the Medicaid program under a State plan approved under Title XIX.

View [additional EMTALA resources](#).

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