

Testimony
Health Care Reform Review Committee
Tuesday, November 12, 2013
North Dakota Department of Health

Good afternoon, Chairman Keiser and members of the Health Care Reform Review Committee. My name is Bridget Weidner, and I am a program manager in the Health Resources Section for the North Dakota Department of Health. I am here today to provide information about the Emergency Medical Treatment and Labor Act, referred to as EMTALA.

The North Dakota Department of Health, through contractual agreement with the Secretary of the Department of Health and Human Services, inspects health-care facilities on behalf of and under the authorization of the Centers for Medicare and Medicaid Services to determine EMTALA compliance.

Medicare participating hospitals must meet the federal EMTALA statute codified at 1867 of the Social Security Act, the regulations at 42 CFR 489.24, and the related requirements at 42 CFR 489.20 (l), (m), (q), and (r). EMTALA requires hospitals with emergency departments to provide a medical screening examination to any individual who comes to the emergency department and requests such an examination. EMTALA prohibits hospitals with emergency departments from refusing to examine or treat individuals with an emergency medical condition.

EMTALA was implemented to prevent the “dumping” of patients who were unable to pay for services. Prior to EMTALA, a patient coming into a hospital emergency department often had no right to treatment or even evaluation, no matter how dire the medical condition. If patients could not prove that they had the resources to pay for care, they could be turned away or sent elsewhere. These individuals often suffered adverse health consequences or death as a result of delayed care. EMTALA was designed to provide protection to patients.

EMTALA applies to acute care hospitals and critical access hospitals. The EMTALA provisions pertain to all individuals, not just Medicare beneficiaries, who present to a hospital for emergency care. Section 42 CFR 489.20(l) of the provider’s agreement requires hospitals to comply with the provisions of EMTALA in order to be Medicare certified. Failure to comply with these requirements jeopardizes the Medicare/Medicaid certification of the hospital.

Hospitals with an emergency department that participate in Medicare are required under EMTALA to do the following:

- Provide an appropriate medical screening examination to any individual who comes to the emergency department;

- Provide necessary stabilizing treatment to an individual with an emergency medical condition or an individual in labor;
- Provide for an appropriate transfer of the individual if either the individual requests the transfer or the hospital does not have the capability to provide the treatment necessary to stabilize the emergency medical condition or the capability or capacity to admit the patient; and
- Not delay examination and/or treatment in order to inquire about the individual's insurance or payment status.

If an individual comes anywhere on hospital property, an EMTALA obligation may be triggered if either the individual requests examination or treatment for an emergency medical condition or if a prudent layperson observer would believe that the individual is suffering from an emergency medical condition. The term "hospital property" means the entire main hospital campus, including the parking lot, sidewalk, and driveway or hospital departments including any building owned by the hospital that are within 250 yards of the hospital. Hospitals are not allowed to move individuals to off-campus facilities or departments, such as an urgent care center or satellite clinic, for a medical screening examination. I am aware of two specific situations in which the layout of the hospital made it such that patients presented to a central desk and a receptionist triaged individuals to either the emergency room or to the attached clinic. This situation was not allowed by CMS and the hospitals were required to come into compliance with EMTALA. In addition, hospitals that refer patients to a clinical setting after presenting to the emergency room but before a medical screening examination has determined no emergency medical condition exists, have been found to be in violation of EMTALA.

I would like to speak specifically to critical access hospitals. As I mentioned earlier, EMTALA applies to critical access hospitals. 42 CFR 485.618 requires critical access hospitals to provide emergency care on a 24-hour-a-day basis. All emergency services in a critical access hospital must be provided as a direct service. The emergency room cannot be a provider based off-site location. An adjacent clinic used for emergency purposes does not meet this requirement. If a patient presents to the critical access hospital, a medical screening examination to determine if an emergency medical condition exists must be conducted. If a patient is sent from the emergency room to an adjacent clinic prior to a medical screening examination, this would be considered a violation of EMTALA. If a medical screening examination determines an emergency medical condition does not exist, the EMTALA obligations have been met.

Unlike some other regulations, EMTALA does not include a state option to waive the requirements. A waiver may only be issued when the President has declared an emergency or disaster and the Secretary has declared a public health emergency and has exercised waiver authority.

This concludes my testimony. I am happy to answer any questions you may have.