Texas EMTALA Series Questions

1. So consultation with the receiving facility MD by the sending PA is not enough? Our ED is staffed with an NP or PA with our medical director offsite. So my ED provider will have to call OUR medical director for every transfer?

   Answer: Under tag A2409/C2409, it states : "Under certain circumstances qualified medical personnel other than a physician may sign the certification. A qualified medical person (QMP) may sign the certification of benefits versus risks of a transfer only after consultation with a physician who agrees with the transfer. The physician must subsequently countersign the certification. The physician's countersignature must be obtained within the established timeframe according to hospital policies and procedures. Hospital by-laws or rules or regulations must specify the criteria and process for granting medical staff privileges to QMPs, and, in accordance with the hospital or CAH Conditions of Participation, each individual QMP must be appropriately privileged.

   The physician at the receiving hospital normally does not have privileges to treat, attend or consult with providers at your facility regarding patients. The interpretative guidelines require that the physicians and individual QMP be appropriately privileged at your facility. If the physician does not have privileges, they could not be signing the transfer form.

2. If patient presents to ED, needs OB evaluation, is it acceptable to send back down to ED and to a waiting room after being triaged by ED?

   Answer: Under A2406/C2406, the hospital is responsible ongoing monitoring of the individual until such a time as the physician (MD/DO) or QMP determines that there is an EMC or there is not an EMC.

   The question becomes how will the hospital continue to monitor the individual based upon their needs until this determination is made and until she has been appropriately stabilized or transferred.

   It may be acceptable; however it will be based upon the individual facts and circumstances.

3. I have a question about a specific scenario and whether or not there would be an EMTALA violation. I am at a small CAH with a separate but adjacent clinic. If I had someone presenting to clinic with a condition that was stable but required a higher level of care than what could be performed at our ER and hospital, is it a violation to tell the

patient to go to an ER with those capabilities in another town without having acceptance at that ER? What we usually do is call the intended receiving facility's transfer center and get official acceptance in that ER in order to avoid any possible violations.

Answer: It depends. Is the adjacent clinic owned by the CAH? If it is owned by the CAH, is it provider based? (In other words are the services billed as a CAH outpatient service with both facility fees and professional fees?) If the answer is "yes", then this clinic is considered another outpatient department of the hospital and subject to the hospital's EMTALA policies.

Is the adjacent clinic a Medicare certified rural health clinic? If it is, then it is not subject to EMTALA.

If the adjacent clinic is a Part B Medicare provider only, it is not subject to EMTALA.

From a best practices and best care collaboration, I agree that your practice of calling the other hospital's ER and getting acceptance prevents miscommunication and avoids possible violations. It is not always possible for the receiving hospital to know what type of "clinic" another hospital or CAH has and when the patient states "I just came from hospital A", the first reaction by the receiving hospital is that there is an EMTALA violation. I would recommend continuing with your existing practice to prevent and avoid miscommunication that sometimes leads to investigations.

4. Can a level one trauma center only see trauma pts, without violating EMTALA. example hospital will only take ophthalmology traumas in the ED but transfer out a pt who presents to the ED with a non-trauma eye injury? Claiming they only see trauma pts.

   Answer: A hospital is required to conduct a medical screening examination of each patient who presents by a qualified medical person and determine whether or not an emergency medical condition exists. Under A2407/C2407 (top of page 52) "A hospital's EMTALA obligation ends when the physician or QMP has made the decision that no emergency medical condition exists (even though the underlying medical condition may persist." So depending upon the individual facts and circumstances, a non-trauma eye injury may or may not be an EMC.