



## KANSAS HOSPITAL ASSOCIATION

# EMTALA & QMPs

**October 2003**

*Third in a series of EMTALA Updates*

CMS published the Final EMTALA Rule in the *Federal Register* on September 9, 2003, and it will become effective November 10, 2003. One of the issues clarified was the use of Qualified Medical Personnel (QMP). This Update addresses QMPs, EMTALA screenings and related issues.

**THE RULE:** The EMTALA rule at 42 C.F.R. 489.24(a) states in part that an EMTALA examination must be conducted by individuals determined qualified by hospital by-laws or rules and regulations and who meet the requirements of 42 C.F.R. § 482.55. This latter C.F.R. requires that emergency services must be supervised by a qualified member of the medical staff and there must be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility. A non-physician person who meets this definition is referred to in the EMTALA regulation as a "qualified medical person." (QMP).

### **EMTALA & QMPs:**

**TRANSFERS** - A QMP may sign a transfer certificate if a physician is not physically present in the emergency department at the time the patient is transferred but only after a physician in consultation with the QMP agrees with the certificate and subsequently countersigns the certificate.

**SCREENINGS** - QMPs may conduct the EMTALA screening examination.

**CMS POSITION:** In the September 9, 2003 *Federal Register* CMS stated that EMTALA does not require that all screening be performed by an M.D. or D.O. but that any non-physician (e.g. such as an emergency room registered nurse according to the CMS example in the *Federal Register*) who performs such screening should be an individual whom the hospital has designated as a QMP for purposes of appropriate transfer certification.

CMS stated that if an individual comes to a dedicated emergency department and a request is made for examination or treatment of a medical condition, but the nature of the request makes it clear that the condition is not of an emergency nature, the hospital is required to perform only such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition. CMS permits the individual to be screened by appropriate non-physician emergency department staff and, if no emergency condition is found to exist, to allow referral of that individual to the individual's physician's office for further treatment. (*continued on page 2*).

***The Kansas Hospital Association provides updates to its members on topics of interest. These updates are for general information and educational purposes. The updates do not constitute legal advice. KHA appreciates the assistance of Steve A. Schwarm, Polsinelli Shalton Welte, in the preparation of these updates.***

**SPECIAL RULES RELATING TO LABOR:**

Labor in EMTALA is defined to mean the process of childbirth beginning with the latent or early phase of labor and continuing through the delivery of the placenta. A woman experiencing contractions is in true labor unless a physician certifies that, after a reasonable time of observation, the woman is in false labor.

In a January 16, 2002 letter (S&C-02-14) the Director, Survey and Certification Group, CMS sent a letter to all "Associate Regional Administrators, DMSO" stating that under 42 C.F.R. § 489.24(a) medical personnel who are qualified by a hospital to conduct "appropriate medical screening examinations" including QMPs can examine a woman and make a diagnosis that a woman is in "true" labor since "true labor" is considered an emergency medical condition.

This letter goes on to state that EMTALA requires that a woman experiencing contractions is in "true labor" unless a physician certifies that the woman is in false labor. Therefore, according to CMS, "when a QMP diagnoses a woman to be in 'false labor,' a physician is required to certify that diagnosis before the patient can be discharged."

**QMPs MAY CONTACT THE PRESENTING INDIVIDUAL'S PHYSICIAN:** CMS has modified EMTALA to make it clear that QMPs are permitted to contact the patient's

physician at any time to seek advice regarding the patient's medical history and needs that may be relevant to the medical treatment and screening of the patient, as long as this "consultation" does not inappropriately delay the EMTALA screening or stabilizing treatment.

**HOSPITAL OBLIGATIONS:**

While the September 9, 2003 preamble to the EMTALA rule permits a nurse who is a QMP or any other QMP to conduct an EMTALA screening examination special consideration must be given to the presenting condition of the individual. If the individual presents with contractions then a special certification of "false labor" is required before the individual can be discharged. No such special certification is required for discharge for non-labor related non-emergency medical conditions after an appropriate screening has been conducted by a QMP.

The hospital must through by-laws or rules or regulations identify QMPs. This may be on an individual basis. This can also be by category of persons as long as every person in that category meets the requirements to be a QMP (e.g. the person is "qualified in emergency care")



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