Akerman Practice Update

HEALTHCARE

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Two Recent Developments Relating to Local Emergency Transport Protocols

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Changes to EMTALA

On March 6, 2009, Centers for Medicare & Medicaid Services "CMS" released the 2009 Final Rule Revisions to Emergency Medical Treatment and Labor Act (EMTALA). The most notable changes include the option for hospitals to participate in shared community call plans and some revisions to language regarding "on-call" status.

To participate in a community call plan, a hospital must have the following elements established in the call plan, see 42 CFR 489.24(j)(2)(iii):

1. A clear delineation of on-call coverage responsibilities;
2. A description of the specific geographic area to which the plan applies;
3. Assurances that any local and regional EMS system protocol formally includes information on community on-call arrangements;
4. A statement specifying that even if an individual arrives at a hospital that is not designated as the on-call hospital, that the hospital still has to follow EMTALA guidelines (thus, provide a medical screening exam and stabilizing treatment); and
5. An annual assessment of the community call plan by the participating hospitals.

Again, community call plans are optional.

42 CFR 489.20(r)(2) defines on-call status. It has been revised to include physicians who are members of the hospital's medical staff, or who have privileges at the hospital, or who are on the medical staff or have privileges at another hospital participating in a formal community call plan. Essentially, if a hospital chooses to participate in a community call plan, CMS expects the hospital's on-call list will include physicians at other hospitals that are participating in the plan.

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Two minor revisions relate to the requirement that hospitals notify their State Agency when activating their disaster plans and that once a hospital admits a patient, even if the patient is unable to be stabilized, a different hospital with specialized capabilities does NOT have an obligation to accept a transfer. This rule does not apply to persons protected under EMTALA if they are "placed in observation" but does apply to persons labeled as "inpatients".

Certificates of Public Convenience and Necessity

The Florida Hospital Association "FHA" sought a declaratory statement regarding the Department of Health's "DOH" opinion as to how Florida Statutes 401, 395 and the Proposed FAC Rule 64J-1001(4) relate to local trauma transport protocols. FHA asked four (4) questions regarding the permissibility of the following four types of transfers:

1. Interfacility transfer between two counties by a licensee possessing a Certificate of Public Convenience and Necessity, "COPCN", from one county if the other county does not prohibit such transfer or transport;
2. Interfacility transfer or transport by a licensee through, but not to or from, one or more counties;
3. Interfacility transfer or transport by a licensee as part of a coordinated response to a disaster or mass casualty incident;
4. Interfacility transfer or transport by a licensee under an agreement sanctioned by the governing bodies of the affected counties.

In DOH's March 12, 2009 opinion, it defined a COPCN as a "writing permitting an applicant or licensee to provide services…for the benefit of the population for that county or the population of some geographic area thereof" 64J-1.001 (4), F.A.C. The COPCN is only relevant to the beginning and terminating point of a transfer or transport (which shall be within the geographic scope of the COPCN), however, the beginning point of any pre-hospital transport shall be within the geographic scope of the COPCN.

DOH stated that the circumstances detailed in FHA's inquiry, numbers 1 and 2, are permissible. As to the third situation inquired about by FHA, it is permissible in one of three circumstances: 1. the transfer is to or from a county for which the Licensee has a COPCN; 2. the vehicle is rotary winged and there is an applicable Mutual Aid Agreement; or 3. the incident generating the transfer falls under section 401.33(2) of Florida statutes. As to the fourth situation inquired about by FHA, it is permissible in the same three circumstances (with the exception that there is no Mutual Aid Agreement required).

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