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OIG: Hospitals Can Weigh in Before it Reaches a Decision About an EMTALA Violation

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Hospitals get to have their say before the HHS Office of Inspector General (OIG) decides whether they have violated the Emergency Medical Treatment and Labor Act^[1] (EMTALA), even if they've already agreed to a corrective action plan with CMS for related deficiencies.

"We make an independent judgment as to what the evidence shows," says OIG Senior Counsel Sandra Sands. OIG attorneys review material from CMS's regional office, state surveyors and a 60-day review by a quality improvement organization (QIO), which considers medical issues in connection with the potential EMTALA violation. Hospitals have a chance to tell their story to OIG in response to the QIO's 60-day report. "We review all the evidence available in addition to what CMS determined during its investigation," Sands tells RMC.

EMTALA requires hospitals to give all patients who show up at the emergency room a medical screening exam (MSE) regardless of their ability to pay, and stabilize them if they present with an emergency medical condition. Patients may be transferred if hospitals lack the capacity or capability to treat them, and receiving hospitals must accept transfers unless they lack the capacity or capability. If they violate EMTALA, hospitals risk Medicare termination by CMS and civil monetary penalties or exclusion by OIG.

Some attorneys have expressed concern that hospitals accept plans of correction based on dubious findings of EMTALA deficiencies because they can't risk Medicare termination. "There's not a lot of opportunity to engage in meaningful conversation," says one attorney, who prefers not to be identified. Surveyors who evaluate EMTALA compliance on CMS's behalf cite deficiencies that are not always supported by law, the attorney contends. "They weren't doing it to be punitive. That was their interpretation," but the attorneys worry it carries over to OIG when it's time to consider civil monetary penalties for EMTALA violations. The attorney said that CMS's July 2 guidance on EMTALA and psychiatric hospitals^[2] clarified, for example, that regardless of what some state surveyors have said, "It is within the scope of practice for ED physicians and practitioners to evaluate patients presenting with mental health conditions, same with any other medical, surgical, or psychiatric presentation." In other words, the MSE doesn't necessarily have to be performed by a psychiatrist.

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