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CMS Suspends Non-Emergency Surveys Because of COVID-19, But There's No Pass on EMTALA

By Nina Youngstrom

CMS on March 4 suspended “non-emergency” surveys of compliance with the Medicare conditions of participation to free surveyors to focus on coronavirus and other “serious health and safety threats.” That doesn’t mean surveyors will ignore other violations, however, and hospitals “won’t get a pass” on the Emergency Medical Treatment and Labor Act (EMTALA), a former CMS official tells RMC.

“There may be a very narrow, focused survey because of the current health crisis, but you are expected to be in compliance with all Medicare requirements, including EMTALA, the Clinical Laboratory Improvement Amendments and the Life Safety Code,” said Mary Ellen Palowitch, who until mid-February was the EMTALA technical lead in the CMS Quality, Safety & Oversight Group and is now with Dentons US LLP in Washington, D.C.

At some point, however, HHS could waive parts of EMTALA and HIPAA in certain circumstances, attorneys said.

In a memo^[1] to state survey agency directors, David Wright, the director of the Quality, Safety & Oversight Group in CMS’s Center for Clinical Standards, said surveys will be limited to complaints of immediate jeopardy (cases that put patients at risk of death or harm) and alleged infection control concerns, including potential COVID-19, the illness caused by the coronavirus; recertifications required by statute; revisits to resolve enforcement actions; initial certifications; surveys of facilities/hospitals with infection control deficiencies at the immediate jeopardy level in the previous three years; and “surveys of facilities/hospitals/dialysis centers that have a history of infection control deficiencies at lower levels than immediate jeopardy.”

The suspension of nonemergency surveys is a first for CMS, Palowitch said. Narrowing their scope allows CMS surveyors to inspect more facilities faster because survey teams will be smaller (one to three members), and to stay fewer days at each facility. “It’s a really big change. They are treating it more like complaint surveys so they can be focused,” she explained. “I think they are trying to cast a pretty wide net.” Because surveyors are now looking through an infection control lens, they’re not focused on compliance with other conditions of participation and conditions of coverage, but they won’t be blind to them either, Palowitch said. Infection control “touches all parts of the facility,” including laundry, pharmacy, waiting rooms, isolation and dietary, and if surveyors “are onsite and identify other deficiencies, they can cite the hospital for that.”

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