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CMS EMTALA Memo: Hospitals Must Accept COVID-19 Patients; Alternate Sites May Be OK

By Nina Youngstrom

Even as it warned hospitals they must comply with the screening and transfer requirements of the Emergency Medical Treatment and Labor Act (EMTALA) in the uncharted waters of the new coronavirus, CMS said in a March 9 memo^[1] it could screen people at alternate-care sites, such as cars. But the lack of negative pressure rooms or intensive care units is not a reason for hospitals with emergency departments (EDs) to turn away transfers of patients infected with COVID-19, the illness caused by the coronavirus, according to the memo.

“There is guidance around directing patients to alternate sites. That’s the buzzword,” said attorney Holley Lutz, with Dentons US LLP in New York City. The question now is, what are all the options for alternate sites, and how can hospitals screen people for COVID-19 consistent with EMTALA and Centers for Disease Control and Prevention (CDC) guidelines, with an eye toward keeping people out of the ED? “Not all sites are created equal,” she said. And if they encourage the use of alternate sites in their signs and on their website, hospitals have to guard against a subtext of sending people away from the ED, which could violate EMTALA, said Gregory Fosheim, an attorney with McDermott Will & Emery LLP in Chicago, Illinois.

CMS also addressed questions hospitals have about receiving patient transfers with COVID-19, said attorney Sandra DiVarco, also with McDermott Will & Emery LLP in Chicago. Hospitals have been asking whether they can refuse transfers if they have no patients with COVID-19. The answer is usually no, DiVarco said. In the memo, CMS emphasized that EMTALA is in effect, although hospitals wondered after CMS suspended “non-emergency” surveys of compliance with the Medicare conditions of participation to free surveyors to focus on the coronavirus and other “serious health and safety threats,” according to a March 4 memo.^[2] But that doesn’t mean surveyors will ignore other violations, and hospitals “won’t get a pass” on EMTALA, a former CMS official told RMC^[3] when the memo was released.

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