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CMS Memo on Violence Reminds Hospitals That CoPs on Safe Environment Will Be Enforced

By Nina Youngstrom

It was during her own recent five-day inpatient stay, split between two hospitals, that attorney Kathy Poppitt found out how much of a toll the specter of violence—and sometimes the actual experience of it—is taking on nurses and other employees.

"It was eye-opening," said Poppitt, with King & Spalding in Austin, Texas. "This is a real issue in hospitals." One of the hospitals operates under a code brown, which is a call for security to a room because of a violent person. A third hospital in Colorado, where her brother was treated around the same time, has "person-sized signs all over" with the phrase "violence is not tolerated."

Seeing this first-hand at the hospitals, which Poppitt said provided excellent care, resonated when she read CMS's Nov. 28 memo on workplace violence in hospitals.[1] The memo reminds hospitals that compliance with the Medicare conditions of participation (CoP) requires them to care for patients in a safe setting and that "CMS believes that healthcare workers have a right to provide care in a safe setting."

Although there's nothing new in the memo, it brings violence "up to the top," Poppitt said. "It's disruptive and alarming. Hospitals need to show they have taken the safety of patients and their employees seriously."

The memo parrots language from appendices A and Z of the *State Operations Manual*, which provides guidance to surveyors who assess hospitals and other health care facilities for CoP compliance, said Mary Ellen Palowitch, a senior managing director with Dentons US LLP. "Instead of putting out new regulations or guidance, CMS is trying to remind facilities that not only do they have to take care of patients, but ensure the environment is safe and that includes staff members," she said. CMS is responding to an increase in violent incidents at hospitals, Palowitch said. The memo noted that health care workers accounted for 73% of all nonfatal workplace injuries and illnesses caused by violence in 2018, and things are just getting worse. For example, a man was charged in October with capital murder after fatally shooting two employees at Methodist Dallas Medical Center, where his girlfriend was giving birth, according to the Associated Press.[2]

Although Appendix A focuses more on hospital risk assessments for patient safety, CMS is trying to address employee safety as well, Palowitch said.[3] The memo emphasizes that "all hospitals are expected to implement a patient risk assessment strategy, but it is up to the hospital to implement the appropriate strategies."

Appendix Z is the interpretive guidance for the emergency preparedness CoPs.[4] As the memo explained, "a hospital's emergency preparedness plan must be based on, and include, a documented, facility-based and community-based risk assessment, utilizing an all-hazards approach." The emergency preparedness CoP also requires hospitals to train staff and have policies and procedures designed to protect their workforce and patients.

Palowitch said the emergency preparedness regulations started with a focus on environmental risks, such as

floods and hurricanes, but now encompass infectious diseases and violence. "CMS is reinforcing its expectation that not only are you looking at whether you can survive a flood by putting a generator on the roof, how you are protecting infants from abduction and the elderly from falls, but how you are assessing when someone is behaving badly and potentially acting out in the emergency department," she explained.

CMS has cited hospitals for failure to comply with these obligations and said in the memo that it "will continue to enforce the regulatory expectations that patient and staff have an environment that prioritizes their safety to ensure effective delivery of healthcare."

Implications for EMTALA

Poppitt has worked with hospitals who were questioned by surveyors about their response to a violent incident. In one case with an Emergency Medical Treatment and Labor Act (EMTALA) twist, a hospital transferred a patient who was brought in after punching his attorney. "He had a history of violence and the hospital said it didn't have the capacity to deal with it," she said. The transfer came up in a survey because the hospital reported to CMS that another hospital refused the transfer of the patient, but "we were able to resolve it because we had documentation to back up everything we did."

A different hospital had security guards with "a propensity" to use tasers in a way that violated the hospital's policy, Poppitt said. "We had to rewrite their policy to make it more clear and retrain the security guards on the appropriate use of tasers," she said.

The emergency room is a magnet for incidents. "People get angry because they're in pain or a loved one is hurt," Palowitch said. "They're angrier there than in any other location," especially if there are very long wait times. "There is so much stress and people respond badly." Sometimes people verbally abuse, threaten or push employees "before you even get to guns and knives." When she was the EMTALA technical lead in the CMS Quality, Safety & Oversight Group at CMS, Palowitch said her team was asked by some hospitals if they were still obligated under EMTALA to screen patients who refused to comply with their policy requiring everyone to pass through a metal detector. "I would say you're placing yourself at risk of noncompliance with EMTALA because everyone who requests the medical screening exam must receive an exam to identify emergency medical conditions" and if they have an emergency medical condition, they must be stabilized. Palowitch would suggest having other steps they could take for people who won't go through metal detectors to ensure patients and staff are safe, such as having security at their bedside or taking their belongings when they're on a stretcher.

Palowitch said there are various ways to protect patients and staff from violence, including the use of security cameras, having badge access for certain doors and implementing visitor restrictions. "Being aware is part of the risk strategy," she said. "But I don't know if there is any way to minimize every risk."

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1 Centers for Medicare & Medicaid Services, "Workplace Violence-Hospitals," memorandum from Directors, Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG) to State Survey Agency Directors, November 28, 2022, https://go.cms.gov/3Uo9lku.
2 Associated Press, "Official: Dallas shooter was attending birth at hospital," October 23, 2022, https://bit.ly/3Ui3PQ9.
3 Centers for Medicare & Medicaid Services, "Appendix A - Survey Protocol, Regulations and Interpretive Guidelines for Hospitals," *State Operations Manual*, Pub. 100-07, revised February 21, 2020, https://bit.ly/3VqckKk.
4 Centers for Medicare & Medicaid Services, "Appendix Z- Emergency Preparedness for All Provider and Certified

Supplier Types Interpretive Guidance," *State Operations Manual*, Pub. 100-07, revised March 16, 2021, https://bit.ly/3gXfCpr.