

GUEST COLUMN

Getting Paid for Emergency Care

Understanding the Applicable State and Federal Statutes and Regulations.

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Because of various governmental mandates regarding emergency care, hospitals and physicians routinely provide emergency care to patients without first knowing or inquiring as to the patient's health plan coverage or ability to pay for such services. However, it is more important today than ever that healthcare providers, once such services have been provided, obtain reimbursement if at all possible.

Limitations on and constrictions in managed care payments, together with payment cuts resulting from the Balance Budget Act of 1997, continue to burden an already strained healthcare system. Although some limited relief was provided by the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, and the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000, many providers face an uncertain financial outlook as the number of uninsured continues to expand and as hospital emergency rooms increasingly become a primary source of care for both low-income and uninsured individuals.

EMTALA, the Texas Emergency Services Law, and the Texas Transfer Law

The Emergency Medical Treatment and Labor Act ("EMTALA") is a federal statute that mandates that any patient who seeks care in a Medicare or Medicaid participating hospital must be provided a medical screening examination, together with medical treatment to stabilize any emergency medical condition, without regard to the patient's ability to pay.

Similarly, Texas has a law designed to prevent discriminatory practices in emergency care based upon a patient's ability to pay. Specifically, the Texas emergency services law prohibits hospital employees and medical staff from denying emergency services simply because the patient's ability to pay for the services cannot be established, and provides that a

patient needing medical services may not be subjected to unreasonable discrimination based upon economic status. Texas also has a separate law requiring that patient transfers between hospitals be accomplished pursuant to hospital policies that are intended to ensure that only medically appropriate transfers occur. In addition to these state laws, the new Medicare outpatient prospective payment system extends EMTALA screening and stabilization requirements to off-campus hospital outpatient departments.

In general, under EMTALA hospitals with emergency departments are required to provide appropriate medical screening examinations of patients seeking examination or treatment for a medical condition to determine whether or not an *emergency medical condition* exists. As used in EMTALA, the term *emergency medical condition* means—

- A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—
 1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
 2. Serious impairment to bodily functions, or
 3. Serious dysfunction of any bodily organ or part; or
- With respect to a pregnant woman who is having contractions—
 1. That there is inadequate time to effect a safe transfer to another hospital before delivery, or
 2. That transfer may pose a threat to the health or safety of the woman or the unborn child.

If an emergency medical condition does exist, the hospital is required to stabilize the patient and/or to make an appropriate transfer to another medical facility. The hospital is expressly prohibited under EMTALA from delaying the medical screening examination, or any required stabilization treatment, in order to inquire about the patient's method of payment or insurance status. Severe penalties are provided for violations of EMTALA.

third-party payers from requiring healthcare providers to obtain prior authorization or pre-certification as a prerequisite for the payment of emergency care. Likewise, various statutes and regulations exist that require certain payers to pay for emergency care regardless of whether the healthcare provider has a contractual relationship with the payer.

By way of example, a state statute exist in Texas that explicitly requires HMOs to pay for emergency care

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The Problem: No Funding Under EMTALA for Emergency Care

While the Texas emergency services law makes clear that its provisions do not relieve a patient of his or her obligation to pay for the services received if the patient can indeed pay, neither the Texas emergency services law, EMTALA, or any of the other governmental mandates concerning emergency care described above provide any funding whatsoever with respect to the provision of such care. In fact, as pointed out above, the applicable governmental mandates actually place severe restrictions on a provider's ability to investigate or inquire about the patient's health plan coverage or ability to pay prior to rendering the emergency care. As a result, actual reimbursement for emergency screening and stabilization services can vary greatly.

While under certain circumstances state Medicaid programs are supposed to pay for emergency services if provided to certain low-income individuals, Medicaid reimbursement can be well under cost. In addition, some Medicaid Managed Care Organizations have been known to avoid paying for these services through claim denials, especially when dealing with non-contracted providers. Regrettably, except with respect to Medicaid-eligible undocumented aliens, there is not any federal program available at present to reimburse healthcare providers for emergency care provided to the uninsured.

Nevertheless, there are some very important tools available to healthcare providers to assist them in recovering payment for emergency care from third-party payers, regardless of whether the provider has a contractual relationship with the payer, and despite the fact that no preauthorization or pre-certification was either sought or obtained prior to the rendering of care.

Tools Available to Help Providers Obtain Payment for Emergency Care

Providers need to be aware that an assortment of statutes and regulations exist that prohibit a variety of

services performed by non-network physicians and providers without regard to whether the physician or provider furnishing the services has a contractual or other relationship with the HMO. The statute adopts a "prudent layperson" standard for purposes of determining when an emergency exists. That same statute contains provisions governing coverage for post-stabilization care, and provides specific time limits for the HMO to approve or deny coverage for post-stabilization care.

In a similar way, the Texas PPO statute addresses reimbursement for emergency care services performed by non-network physicians and providers in those situations where the insured cannot reasonably reach a preferred provider. In addition, the PPO statute provides that post-stabilization care is to be reimbursed until the insured can reasonably be expected to transfer to a preferred provider. As in the HMO statute, a "prudent layperson" standard is used for purposes of determining whether an emergency exists.

Healthcare providers should also be aware that other state and federal statutes and regulations exist that can help them obtain payment for emergency care provided to patients covered by Medicaid HMOs and Managed Care Organizations, Medicare HMOs and Competitive Medical Plans, various state and federal workers' compensation systems, and various state and federal employee benefit plans, often without regard to prior authorization or to the provider's contractual relationship to the payer.

Although neither EMTALA nor the corresponding state emergency services law provides any funding for emergency screening and stabilization, both state and federal law can provide some very important tools to healthcare providers in their efforts to recover payment for such care from third-party payers. ■

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