

Copay Collection Cannot Delay Care, or Hospital Risks EMTALA Violation

Patients come to EDs seriously ill, injured, and worried, often without any identification or insurance card. In addition to all these challenges, ED registrars also have to keep the Emergency Medical Treatment and Labor Act (EMTALA) law in mind when collecting copays.

“Timing is crucial, and it’s most likely what gets providers into trouble,” says **Edna McLain**, JD, a partner in the Chicago office of SmithAmundsen.

In general, the key is to ensure any payment request does not impede the medical screening exam (MSE) or any needed stabilization services required to address an emergency medical condition, as defined under EMTALA, says **George Breen**, JD, chair of the National Health Care & Life Sciences Steering Committee at Epstein Baker Green in Washington, DC.

Whether asking for payment is an EMTALA violation probably depends on exactly when in the ED visit a registrar makes the request. “This requires good communication between

registration staff and medical personnel,” McLain says. ED registrars should bring up payment or insurance only after a MSE and stabilizing treatment has been provided. This means a patient should not be asked about copays or payment during the MSE or while undergoing stabilizing treatment.

Asking for an individual’s basic identification information and emergency contact information are permitted as part of the registration process.

“However, registration staff should not delay the MSE or stabilizing treatment to inquire about payment or insurance,” McLain cautions.

Problems occur if registration practices delay the required MSE, medical stabilization, or transfer. “The cardinal rule to remember is that reasonable registration practices are fine,” says **Douglas B. Swill**, JD, a partner in the Health Care Group at Faegre Drinker Biddle & Reath. “This generally means that staff are not pursuing financial responsibility

answers and determinations while the patient who has an emergency medical condition is unreasonably delayed in receiving the MSE — or worse, stabilizing medical treatment.”

If a qualified triage professional determines the patient can wait a reasonable amount of time for the MSE, then further collection of information can occur, as long as doing so does not delay the MSE.

Gathering names, addresses, and even insurance cards may be an appropriate and reasonable registration practice — again, provided it does not delay a timely MSE. Collecting copays before an MSE or stabilizing medical care happens may seem harmless to registrars, but it could land the hospital in trouble.

“It could likely subject the hospital to potential EMTALA violations — or, at the very least, a very challenging response to a federal or state survey team sent to the hospital to assess whether such registration practices violated EMTALA,” Swill cautions. ■

Many Patients Worry About Hospital Bill During ED Visit

Most ED registrars probably know better than to ask for payment before a medical screening examination (MSE) is completed to avoid an EMTALA violation. However, some patients bring up the topic of money themselves. Some ask, “How much is this visit going to cost me?” or “Does my insurance cover this?”

If the answer is not too reassuring, that patient might leave to avoid a huge bill. That could be construed as an EMTALA violation. “Because of the possible deterrent effect, a helpful

answer to a patient asking about insurance could be, ‘You have a right to a medical screening examination and certain appropriate treatment, regardless of ability to pay,’” says **Lee Little**, JD, an attorney at Augusta, GA-based Hamil Little.

It is not an automatic EMTALA violation for registrars to ask about insurance after triage but before the MSE. However, it is a potential violation if the MSE is delayed because of it, or the patient is deterred from staying in the ED because of it.

“Sound policies, staff training, scripting, and tight practices are needed to ensure compliance,” Little offers. “Some conservative hospital risk managers err on the side of caution.”

They simply advise registrars not to ask for any financial information or engage in any such discussions until after the MSE is over. This includes not even asking for an insurance card or taking a \$20 copay.

To avoid problems with EMTALA, Little says hospitals “should have well-trained staff, using carefully drafted