

**American Academy of Pediatrics
Council on Community Pediatrics
Rural Health Special Interest Group**

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Rural Pediatrician On-call and EMTALA

**"Where ever three or more of ye shall gather ye will be obligated to call."
Commandment or curse? Where did this dictum originate? What is
EMTALA?**

As a pediatrician who spent 25 years in solo practice call schedules never meant much to me since I was always on call. Now that I have recruited two partners the call schedule has taken the dreaded position of prominence I used to just witness from a distance. Constant schedule re-arrangement, confusion with hospital nurses and ER Doc's wondering who's on call and an interpretive change. In the old days it was "let's only call peds for serious stuff" to "peds is 'fully' staffed, call them when you need them."

Well, let's start by ending the myth that full time hospital coverage by a specialty is dictated by EMTALA . Mr. M. Sean Fosmire, an experienced hospital and physician defense attorney in Marquette Michigan has published the following:

1. What is EMTALA?

The Emergency Medical Treatment and Active Labor Act is a statute, which governs when, and how a patient may be (1) refused treatment or (2) transferred from one hospital to another when he is in an unstable medical condition.

EMTALA was passed as part of the Consolidated Omnibus Budget Reconciliation Act of 1986, and it is sometimes referred to as "the COBRA law". In fact, a number of different laws come under that general name. Another very familiar provision, also referred to under the COBRA name, is the statute governing continuation of medical insurance benefits after termination of employment.

EMTALA is also known as Section 1867(a) of the Social Security Act. It is included as part of the section of the U.S. Code which governs Medicare.

EMTALA applies only to "participating hospitals" -- i.e., to hospitals which have entered into "provider agreements" under which they will accept payment from the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) under the Medicare program for services provided to beneficiaries of that program.

What are the requirements of EMTALA for ER staffing and call lists?

A quick and roughly accurate answer is that there are no official requirements imposed by EMTALA. Rather, the affirmative obligation to maintain a call schedule is imposed on hospitals by another section of the Medicare statute, although it refers back to the EMTALA obligations. The language of 42 USC §1395cc(a)(1)(I) is:

[In order to be eligible, a facility must file an agreement]

* * *

(I) in the case of a hospital or critical access hospital -

* * *

(iii) to maintain a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition. . .

Physicians are often told by hospitals that they are "required by EMTALA" to serve on a call schedule. The truth is that EMTALA does not impose any requirement on physicians that they serve on a call schedule. It is the hospital which imposes an obligation on physicians in order to meet the obligation imposed upon it by the Medicare statute. The obligation of a physician to serve on a call schedule is legally based on state law governing contracts, derived from the agreements attendant to medical staff membership, rather than an obligation placed on the physician by Federal law.

As noted above, Section 1395dd(d)(1)(C) imposes a penalty on a physician who fails to respond to an emergency situation when he is assigned as the on-call physician. This is the only obligation placed on physicians governing the obligation to respond to an emergency situation. This provision does not require that a particular physician or particular specialty provide coverage on a call basis.

With a couple of exceptions, the statute and regulations impose all of their obligations on hospitals. This area is no exception. The expectations of CMS and of the courts in construing EMTALA are directed at hospitals. Hospitals are left to their own devices as to how to ensure compliance by members of their medical staffs.

In comments before the Practicing Physicians Advisory Commission on June 3, 2002, CMS counsel Thomas Barker stated that EMTALA clarifications should be "guided by common sense and work in the real world." Mr. Barker noted that the EMTALA revisions are being made with four guiding principles in mind:

1. Same treatment for all
2. Patient access
3. Reflects the real world
4. Relieves some of the call burden on physicians

So there you have it. Mr. Barker seems more accommodating than my Medical Executive Committee and Medical Director.

I would like to hear your thoughts. How do you provide after hours pediatric service to your patients and hospital?

Do you share responsibilities with family practice? Should pediatricians have work restrictions that apply similar to residents, truck drivers or airline pilots?

Can senior physicians get off call when they reach an agreed upon age?

Another seldom-discussed aspect of call is the impact call has on wives and children. Does call impact your family? Have you developed any coping skills? One study found that what kids hated most next to the perceived irritation their parent had on call days was having to answer the phone and sometimes lie about availability.

So please take a minute to share your solutions or frustrations or EMTALA interpretations.

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