



Strasburger
ATTORNEYS AT LAW

Health Industry Online

HEALTH INDUSTRY ONLINE • February 06, 2008 • [STRASBURGER & PRICE, LLP](#)

PREPARED BY



[Carol D. Williamson](#)

901 Main Street
Suite 4400
Dallas, Texas 75202
214.651.4689 Direct
carol.williamson@strasburger.com

EDITORS

[David K. Meyercord](#)
[C. Scott Nichols](#)

HEALTH INDUSTRY GROUP

[Tejal P. Banker](#)
[Debra W. Biehle](#)
[Thomas W. Burton](#)
[Merritt M. Clements](#)
[Kathryn Midboe Darling](#)
[William Duane Darling](#)
[Richard D. Fladung](#)
[R. Bradley Fletcher](#)
[Brian G. Hamilton](#)
[Bryan J. Maedgen](#)
[Cynthia Schafer Marietta](#)
[David K. Meyercord](#)

EMTALA and Physician Call Lists

Past Health Industry Online articles have addressed EMTALA, essentially an anti-discrimination statute intended to ensure emergency care to every patient regardless of the ability to pay. With a couple of exceptions, EMTALA and the burden of its obligations fall on hospitals and not individual physicians. This article will address the issue of physician on-call lists, a requirement imposed on hospitals but directly affecting individual physicians.

Generally, hospitals must maintain a list of physicians, including specialists and sub-specialists, who are on call to evaluate and treat patients in the emergency department at all times. Confusion over which specialties needed to be included on the hospital on-call list led The Centers for Medicare & Medicaid Services (CMS), the federal agency with authority to interpret and enforce EMTALA, to issue updates on its EMTALA implementation regulations in September 2003. While the updates provided additional information regarding the composition of the on-call lists for hospitals, they provided little help for hospitals on the staffing of the call lists.

Essentially, the updated regulations were an attempt by CMS to recognize the wide variation in the size, staffing and capabilities of the many hospitals subject to EMTALA and declined to mandate particular levels of physician staffing or which specialties must be available 24/7. Beware, however, notwithstanding that particular levels of physician staffing coverage are not mandated, gaps in coverage require written "back-up" policies and procedures to respond to situations in which a particular specialty is not available or the on-call physician cannot respond due to circumstances beyond a physician's control. An example of a "back-up" provision would be an agreement with another, larger facility or facilities for the transfer of patients when needed specialist services is unavailable. Without written policies and procedures for handling these "gaps" in call coverage, a hospital will quickly find itself in violation of EMTALA.

[Stuart Miller](#)
[David G. Moore](#)
[Crawford Moorefield](#)
[Craig H. Myers](#)
[C. Scott Nichols](#)
[Laura Reilly O'Hara](#)
[Jeffrey S. Osgood](#)
[David L. Ovard](#)
[D. Patrick Owens](#)
[Paul W. Sheldon](#)
[John A. Tang](#)
[Joseph A. Turano](#)
[Melissa Webb](#)
[Carol D. Williamson](#)
[Ivan Wood](#)
[Kevin M. Wood](#)

 [Printer friendly page](#)

 [View as Acrobat PDF](#)

 [Subscribe to HIO RSS](#)

Despite the CMS updates in September 2003, the debate remains over the required staffing for physician on-call lists. In some ways, CMS regulations gave leverage to the physicians to refuse to participate or minimize their participation in hospital's on-call lists, and created an atmosphere where hospitals are more likely to offer financial incentives and stipends in order to get adequate coverage in compliance with EMTALA. The more difficult it is for a hospital to adequately staff its physician on-call lists, the availability of emergency specialty care is less likely and the transfer of an emergency patient to another facility is more likely.

How much on-call staffing is sufficient? No one can answer that question definitively, but ultimately it will come down to whether CMS determines that the hospital used its "best efforts" to facilitate specialty coverage in its on-call lists. If a hospital documents the process, and policies and procedures are in place to cover contingencies, there is a greater chance that no violation will be found.

As has been set forth in previous Health Industry Online articles highlighting EMTALA, the penalties for running afoul of EMTALA are stiff. Fines of up to \$50,000 per violation may be imposed against a hospital that is found to have violated the law and continued violations can lead CMS to terminate its provider agreement. Although no physician may be fined for refusing to participate in an on-call list, EMTALA contains a provision to penalize any physician who fails to respond to an emergency situation when he is assigned as the on-call physician. See 42 USC § 1395cc(d) (1)(C). Physicians may also run afoul of EMTALA if they fail to participate in a hospital's on-call list and then take calls selectively for patients with whom they or their colleague has a doctor-patient relationship. Moreover, if a hospital permits a physician to selectively take call while the hospital's coverage for emergency services is not adequate, the hospital likewise may be found to have violated EMTALA. As such, on-call coverage is an issue to both hospitals and physicians that should be addressed proactively with careful review of applicable regulatory requirements.

PUBLICATIONS:

- To view past issues of Health Industry Online, please visit [Health Industry Online](#)
- To subscribe to other Strasburger publications, please visit [Strasburger Publications](#)

DISCLAIMER: Articles contained within this newsletter provide information on general legal issues and are not intended to provide advice on any specific legal matter or factual situation. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel.

ADVERTISEMENT NOTICE: This e-mail may constitute a commercial electronic mail message subject to the CAN-SPAM Act of 2003. If you do not wish to receive further commercial electronic mail messages from the sender, please send an e-mail to Strasburger@Strasburger.com and request that your e-mail address be removed from future mailings. To update your address, please send an email to Strasburger@Strasburger.com including the updated information. Strasburger & Price, LLP, 901 Main Street, Suite 4400, Dallas, TX 75202.

