American College of Emergency Physicians®
ADVANCING EMERGENCY CARE

July 2, 2019

Re: QSO-19-13 Hospital

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: DRAFT ONLY- Guidance for Hospital Co-location with Other Hospitals or Healthcare Facilities

Dear Administrator Verma:

On behalf of over 39,000 members, the American College of Emergency Physicians (ACEP) appreciates the opportunity to comment on draft guidance for state surveyors on how to survey hospitals co-located with other hospitals or healthcare facilities. ACEP appreciates the flexibility CMS is granting to hospitals co-located with other hospitals and facilities to meet the Medicare Conditions of Participation (CoPs). The guidance, once finalized, will provide the certainty these hospitals need to obtain the appropriate staff, contractual agreements, and supplies to effectively treat their patients. As emergency physicians, we are especially interested in how this guidance will impact the delivery of emergency services. We have a few comments on the definitions and requirements regarding emergency services that we hope CMS will incorporate into the final guidance.

In the draft guidance, CMS describes how hospitals without emergency departments (EDs) must address individuals' emergency care needs. We definitely agree that these hospitals must have policies and procedures in place for responding to emergencies. Further, we appreciate that the guidance stipulates that hospitals without EDs that contract for emergency services with another hospital's EDs are then considered to provide emergency services and must meet the requirements of the Emergency Medical Treatment & Labor Act (EMTALA). While CMS clearly intends to include all the necessary instructions and requirements in the draft guidance for these hospitals to treat patients experiencing emergencies, there are a few details that would be helpful to include in the final guidance. First, CMS should clearly define "emergency services" using the EMTALA definitions under 42 CFR § 489.24. By connecting the term "emergency services" that is repeatedly used in the guidance to definitions and requirements that are included in 42 CFR § 489.24, hospitals co-located with other hospitals and facilities will be able to look to longstanding and universally accepted requirements to able to fully comply with the guidance. In addition, since the guidance requires hospitals to recognize when a patient must be transferred to another facility

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to receive appropriate treatment, CMS should clearly define "transfer" using the EMTALA definitions under 42 CFR § 489.24 as well. Finally, we recommend that CMS clearly state whether hospitals without EDs must follow EMTALA requirements for any patient that is on "campus," as defined under 42 CFR § 413.65. Because emergencies can occur anywhere within a hospital, these hospitals need to have a solid understanding of exactly where they must provide emergency services and under what circumstances they must meet EMTALA requirements.

ACEP also requests that CMS strength the section that specifically provides guidance to surveyors on how to evaluate emergency care of patients in a hospital without an ED that is co-located with another health care entity. Specifically, CMS should ask surveyors to ensure that these hospitals fulfill all the requirements included in the hospital COP for emergency services under 42 CFR § 482.55. These include:

- The hospital must meet the emergency needs of patients in accordance with acceptable standards of practice.
- The services must be organized under the direction of a qualified member of the medical staff.
- The services must be integrated with other departments of the hospital;
- The policies and procedures governing medical care are established by and are a continuing responsibility of the medical staff.
- The emergency services must be supervised by a qualified member of the medical staff.
- There must be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility.

We are especially interested in ensuring that hospitals have the appropriate qualified staff on-board to treat patients requiring emergency services. This includes having on-call physicians available and meeting all the associated on-call physician requirements under 42 CFR § 489.24.

We appreciate the opportunity to share our comments. If you have any questions, please contact Jeffrey Davis, ACEP's Director of Regulatory Affairs at jdavis@acep.org.

Sincerely,

Vidor E. Friedman, MD, FACEP
ACEP President