

# HEALTH CARE PRACTICE GROUP

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## HEALTH CARE ENTITIES HAVE NEW RESPONSIBILITIES – EMTALA AND IDTF PERFORMANCE STANDARDS

### REVISIONS TO EMTALA HOSPITAL RESPONSIBILITIES: FALSE LABOR AND SPECIALIZED CAPABILITIES

Effective October 1, 2006, the Centers for Medicare and Medicaid Services (“CMS”) has revised hospital responsibilities under the Emergency Medical Treatment and Labor Act (“EMTALA”). The changes clarify who may certify that a woman is in false labor and that hospitals without dedicated emergency departments but with specialized capabilities are required to accept appropriate transfers. The changes may require amending medical staff bylaws and/or policies and procedures.

The first change expands the type of health care professionals who may certify false labor. The new guidance states that:

[A] woman experiencing contractions is in true labor unless a physician, certified nurse midwife, or other qualified person acting within his or her scope of practice as defined in medical staff bylaws and state law, certifies that, after a reasonable time of observation, the woman is in false labor.

Therefore, for the purpose of conducting the medical screening examination for women in labor, hospitals may revise their definition of qualified medical personnel (“QMP”) to include certified nurse midwives or other nurse practitioners that are qualified to diagnose false labor.

The second change affects specialty hospitals or other hospitals that do not have a dedicated emergency department. Some specialty hospitals have historically refused to accept appropriate transfers, even if the hospital has the specialized capability and the available capacity to care for the patient. This change requires that any hospital that has a specialized capability (including but not limited to burn units, shock trauma units, neonatal intensive care units, or rural regional referral centers) may not refuse to accept an appropriate transfer from a United States hospital if the receiving hospital has the capacity to treat the individual. This latest change is intended to apply the EMTALA transfer acceptance requirements to providers who do not have emergency departments, such as specialty hospitals.

### NEW IDTF PERFORMANCE STANDARDS

On November 1, 2006, the Centers for Medicare & Medicaid Services (“CMS”) put on display on its website a copy of the CY 2007 Physician Fee Schedule which includes new performance standards for a Independent Diagnostic Testing Facilities (“IDTFs”). These Performance Standards are intended to ensure that minimum quality standards are met to protect Medicare beneficiaries. The Performance Standards are set forth in 42 CFR §410.33(g) and will apply to all IDTFs as of January 1, 2007 and will be a condition of obtaining or maintaining its Medicare billing privileges.

A summary of some of the more noteworthy requirements included in the Performance Standards follows. Beginning January 2007, all IDTFs must:

- Maintain a physical facility on an appropriate site. A post office box or a commercial mailbox will not be considered a physical facility. The physical facility, including mobile units, must meet certain requirements including space for equipment appropriate to the services designated on the enrollment application, facilities for hand washing, adequate patient privacy accommodations, and the storage of business and medical records.
- Make all applicable diagnostic testing equipment available at the physical site. For portable equipment, a catalog including serial numbers must be maintained at the physical site. The portable equipment must be available for inspection within two (2) business days of a CMS inspection request.
- Maintain a primary business phone under the name of the designated business. The business phone must be located at the designated site of the business or within the home office and must be available in a local directory and through directory assistance.
- Have a comprehensive liability insurance policy of at least \$300,000 per location that covers both the place of business and all customers and employees of the IDTF. The policy must be carried by a non-relative owned company.

- Refrain from directly soliciting patients through any means, including, but not limited to, telephone, computer, or in-person contacts. The IDTF can use public advertisement.
- Openly post these standards for review by patients and the public.
- Disclose to the government any person having ownership, financial, or control interest or any other legal interest in the IDTF.
- Have technical staff on duty with the appropriate credentials to perform tests.
- Permit CMS and its agents to conduct, unannounced, on-site inspections to confirm the IDTF's compliance with these standards.

In addition to the Performance Standards, other regulatory changes set forth in 42 CFR §410.33 (b)(1) and (e) include limiting supervising physicians to providing supervision at no more than 3 IDTFs and establishing requirements for IDTFs that operate across State boundaries. CMS will deny enrollment of any new IDTF that doesn't meet the Performance Standards and will revoke an existing IDTF's billing privileges if CMS determines that an existing IDTF does not meet the supervising physician limitations or the Performance Standards.

A copy of all of the Performance Standards can be found on CMS's website at: <http://www.cms.hhs.gov/MedicareProviderSupEnroll/Downloads/Independentdiagnostictestingfacility.pdf>.

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