

Risk Management Hotline



Follow-up Duty to ER Patients

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The most frequent **Hotline** question we receive related to EMTALA concerns follow-up care. EMTALA stipulates that the hospital must provide the patient with a plan for appropriate follow-up care that is geographically and financially accessible to the patient as part of the discharge instructions. It does not, however, state who must provide the post-discharge services, or make the hospital ensure that follow-up care is obtained. Furthermore, once the patient is discharged, EMTALA no longer applies. Regardless of EMTALA's silence on the who and how of follow-up, hospital emergency rooms routinely send patients to the appropriate specialist for post-discharge care.

Q Does serving as an on-call physician create a physician-patient relationship that would require me to provide post-discharge care?

A The legal theory of professional negligence is based upon the duties that arise from the physician-patient relationship. It is not always clear if a physician-patient relationship has been established that would impose an ongoing duty to the patient, as the on-call physician's involvement may include personally examining and treating the patient, speaking only to the ER physician, having his or her name appear on the discharge instructions, being the on-call physician for that day, or simply being part of an on-call panel. Moreover, even if a physician-patient relationship was established, the relationship may be limited to

providing stabilizing treatment in the ER rather than obliging the physician to provide ongoing care. Patients may reasonably assume that if you provide emergency care and tell the patient of the need for ophthalmic follow-up care, you will provide it. The same is true if the ER tells a patient for whom you provided a telephone consult to follow up with you, or if your name appears on the discharge instructions. If you do not intend to provide post-discharge care, you need to take certain steps. OMIC policyholders who need help determining their relationship and duties to ER patients are encouraged to call our Risk Management Department.

Q One of my patients was seen in the ER. Do I have a duty to provide post-discharge care?

A Yes. If you have a preexisting physician-patient relationship with the individual, you should assume that you are responsible for outpatient follow-up care whether or not you were on call. Obtain the ER record so you know what care was provided.

Q If I accept patients for post-discharge care, and they don't make or show up for their appointment, do I have any follow-up duties?

A You and the patient both face risks in this situation if the patient does not receive the appropriate care. Your name may very well be in the ER record and on the discharge instructions. A plaintiff attorney will likely argue that you have a duty to follow up on this patient; the defense attorney may respond that there was no relationship and that the patient was noncompliant. Ask in writing that the ER fax you the ER record of all patients you saw, were

contacted about, or who were referred to you for post-ER follow-up, and get the patient's name, address, and phone number. Notify your staff of the type of appointment that should be scheduled, and follow-up on missed appointments and test results. For more guidance on this issue, see "Noncompliance" at www.omic.com.

Q The ER referred a patient to me for post-discharge care. When she presented to my office, my staff learned that she had an insurance plan we don't accept. They offered to help her set up a payment plan, but she left without being seen. Can I ask patients to pay for post-discharge care? If they won't pay, do I have to see them?

A Staff may follow normal protocol with new patients referred for outpatient care, including those referred by the ER. In most practices, this protocol includes determining insurance coverage and informing the patient of charges and financial responsibilities. Patients who have no coverage should be told that you are available to care for them. Many practices allow patients to set up payment plans. Such an offer helps refute allegations of abandonment. Patients have the right to refuse treatment, whether for financial or other reasons. Patients who leave without being seen or who decline fee-based services when making the appointment should be reminded of the need for proper follow-up. See the sample Refusal of Care letter in "The Ophthalmologist's Role in Emergency Care: On-Call and Follow-up Duties" at www.omic.com.