

November 18, 2020

Recently, there has been negative media attention on hospital patient transfers related to COVID-19. For example, on October 19, the Wall Street Journal reported that, as coronavirus hospitalizations continued to surge, some California hospitals allegedly refused COVID-19 transfers for financial reasons. At the same time, here in Illinois, Governor Pritzker and the Illinois Department of Public Health (IDPH) have expressed their interest in ensuring that hospital patient transfers are appropriately effectuated during this second COVID-19 surge.

Given these developments and continuing increase in COVID-19 cases and hospitalizations, this memorandum serves as a reminder to hospitals of: (i) the Emergency Medical Treatment and Active Labor Act's requirements, and (ii) guidance which has been issued related to patient non-discrimination in medical treatment during the COVID-19 pandemic.

#### EMTALA

Originally designed to prevent hospitals from transferring uninsured or Medicaid patients to public hospitals without, at a minimum, providing a medical screening examination to ensure they were stable for transfer, the Emergency Medical Treatment and Active Labor Act ("EMTALA") governs when and how a patient may be: (1) refused treatment, or (2) transferred from one hospital to another when she/he is in an unstable medical condition.

For a refresher on transfer requirements under EMTALA, hospitals should review IHA's EMTALA fact sheet. Additionally, hospitals should also review guidance published by the Centers for Medicare & Medicaid Services in the spring on EMTALA Requirements and Implications Related to Coronavirus Disease 2019 and Frequently Asked Questions.

In particular, during this second COVID surge, it will be important for the hospital community to proactively and collectively address any transfer issues. If a hospital is experiencing significant transfer issues, whether transferring or receiving, please advise IHA so that we can work together to address such issues.

#### Patient Non-Discrimination Guidance

On Nov. 12, the Illinois Senate Executive, Labor and Commerce & Economic Development Committee held a joint subject matter hearing on wage equity, workers' rights and consumer protection, highlighting the importance of non-discrimination in healthcare services. As a reminder, the Office of the Governor released guidance for healthcare providers on this issue in collaboration with a broad coalition of state agencies, including:

- Guidance Relating to Non-Discrimination in Medical Treatment for COVID-19 (Apr. 10), focusing on prevention of disability discrimination and racial disparities, while emphasizing access to healthcare; and
- Guidance Relating to Non-Discrimination in Healthcare Services in Illinois (Jun. 26), focusing on prevention of discrimination due to sexual orientation or gender-related identity.

#### *Guidance Relating to Non-Discrimination in Medical Treatment for COVID-19*

The initial guidance for COVID-19 focuses on preventing disability discrimination and racial disparities, emphasizing federal and state civil rights laws that prohibit discrimination in the delivery of healthcare and key principles to help guide healthcare providers in allocating healthcare resources or services during the COVID-19 public health emergency (PHE). The first notice also highlights the importance of ensuring access to healthcare for persons experiencing financial insecurity, undocumented persons and persons with limited English proficiency.

*Guidance Relating to Nondiscrimination in Healthcare Services in Illinois*

The second guidance focuses on protections afforded under the *Illinois Human Rights Act* (IHRA), specifically noting that persons may not be discriminated against because of their sexual orientation or gender-related identity when accessing healthcare services. Additional protections in the IHRA, Illinois Insurance Code, Illinois Administrative Code and the Medicaid Healthcare Illinois contract prohibit discrimination in the offering and provision of health insurance coverage based on actual or perceived gender identity or health conditions, or based on sexual orientation in health insurance.

If you have any questions regarding EMTALA, please [contact IHA](#).

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