

Disaster Planning: Balancing Compliance With Necessity

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Recent disasters, such as Hurricane Katrina, have made health care providers and others keenly aware of the importance of proper disaster planning. Although hurricanes are not a threat in Michigan, we are not immune from potential weather related and/or terrorism related disasters. A major bioterrorism attack, for example, would create problems for the healthcare industry unlike any experienced before. As if disaster planning were not difficult enough, health care regulatory laws sometimes pose additional barriers. Examples of regulations that could present difficulties are:

The HIPAA Privacy Rule

Some health care providers have voiced concern that the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule will create barriers to sharing patient information as necessary to implement bioterrorism and other disaster plans. However, the HIPAA Privacy Rule generally allows disclosures of protected health information without a patient's authorization for the purposes of treatment, payment, or health care operations. The HIPAA Privacy Rule also contains several exceptions that will allow disclosures of patient information to help control the spread of disease and to notify family members in the event of a disaster. Specifically, disclosures are permissible if they are made to a "public health authority" that is authorized by law to collect or receive such information for the purpose of "preventing or controlling disease." 45 CFR 164.512. Section 164.512 also allows disclosure of protected health information to "avert an imminent threat to health or safety." The HIPAA Privacy Rule also allows disclosures to government agencies and disaster relief organizations for the purpose of notifying family members of an individual's location. 45 CFR 164.510.

Credentialing Issues

In some situations, a disaster may require hospitals to share resources, including staff and equipment. In these situations, hospitals must take into account whether providers accepted from another facility meet the hospital's credentialing requirements. To address this concern, JCAHO has issued proposed language for two new standards to address emergency credentialing of "disaster privileges" for volunteer practitioners. Proposed standard HR 1.25 addresses the assignment of disaster job responsibilities, while proposed standard HR 4.35 addresses the assignment of disaster privileges to such volunteer practitioners.

EMTALA

In certain disaster situations, it may be necessary to divert patients to other facilities or off-site locations. These situations raise concerns regarding compliance with the Emergency Medical Treatment and Labor Act (EMTALA). EMTALA generally requires all hospitals with emergency departments to provide a medical screening examination and prohibits such hospitals from refusing to examine or treat individuals with an emergency medical condition. The Centers for Medicare and Medicaid Services (CMS) addressed this issue in the State Operations Manual for Participating Hospitals. The manual notes that in a crisis situation, hospitals diverting patients pursuant to a community response plan would not be sanctioned under EMTALA so long as the hospital provided a medical screening examination upon request of the patient.

Conclusion

Although compliance with rigid health care regulations may be the furthest thing from the minds of health care providers at the time of a disaster, proper planning can assure that best efforts are made to comply with regulatory laws. Proper planning will also help all health care providers answer the very important question: "When a disaster strikes, will our company and staff be prepared?"

For more information on disaster planning, please contact Lori-Ann Rickard of Rickard & Associates, P.C. at (586)-498-0600 or by email at LARickard@larlegal.com