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On-Call Contracts: New Strategies for Physicians and Hospitals

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Across the country and in Kentucky, hospitals are encountering increasing problems providing physician call coverage for emergency departments, while physicians face significant malpractice risk for treating emergency patients who often are uninsured and require continuing hospital care and outpatient follow-up. Complicating matters is a growing shortage of specialists, which often means that physicians are asked to provide call for not just one hospital but several hospitals in a community. As problems intensify, hospitals attempt to impose additional call coverage requirements by changing medical staff bylaws as a means to save costs rather than paying physicians for services. Physicians must voice their concerns and negotiate a system that compensates them for providing on-call coverage in an equitable manner that is reflective of the value of their services to avoid a crisis that negatively impacts patient care.

Historically, the public has expected hospitals to provide 24-hour emergency medical services for life-threatening injuries and medical conditions that individuals experience at any hour of the day or night. In fact, the emergency room is often the only source of medical care for many without insurance or the ability to pay. In the past 10 years, emergency department utilization has increased by 7% from 36.9 to 39.6 visits per 100 persons.¹ Statewide, Kentuckians used EDs during 2007 at a rate of 54 visits per 100 persons.² The number of uninsured patients will continue to increase as the economy declines and the unemployed lose insurance coverage.³ In a national survey of ED directors, 68% of respondents reported that on-call coverage was inadequate to meet the needs of their patients. Of particular concern is that even Level 1 and II Trauma Centers cited on-call coverage as a problem.⁴

As an alternative to imposing on-call duties upon physicians through medical staff bylaws, hospitals should develop contracts that compensate physicians for taking call. Call duties impose not just malpractice risk, but also significant financial burden upon physicians. Once a specialist responds to the ED patient, the responding physician is legally and ethically obligated to provide further services to the patient that may include inpatient and follow-up outpatient treatment. The physician’s cost of providing uncompensated care to these patients must also be considered.

While distasteful to hospitals, payment for physician on-call coverage is an important tool that will effectively address physician on-call shortages and provide a mechanism to address physician concerns about the added liability and costs of responding to calls to treat ED patients. While hospitals often assert EMTALA to justify refusing to pay physicians for taking ED call, EMTALA does not prohibit or even address payment to physicians for providing on-call services.

Federal anti-kickback and Stark laws must always be considered when financial relationships with physicians and hospitals are developed. Recent OIG advisory opinions, however, have approved contracts between hospitals and physicians for providing on-call coverage and can provide a model for devising a contract for paying for on-call services.⁵ The OIG approved a nonprofit hospital’s arrangement to increase the number of physicians providing ED call. The hospital offered a two-year contract to physicians who participate in the call rotation, provide necessary inpatient and consultative services, cooperate with risk management and quality initiatives, and complete medical records in a timely manner. Participating physicians received a per diem payment, but were also required to contribute some free services. The payment rate varied based upon the specialty and whether call was during the week or weekend. The hospital certified that the payment rates were fair market value and did not take into consideration the volume or value of referrals. This advisory opinion also provides important guidance about payments to avoid by identifying several problem arrangements.

Devising on-call contracts and payment mechanisms is tricky, but the OIG has made it clear that payment for on-call services can comply with federal law. While not a panacea to all ED coverage issues, development of physician on-call contracts may serve as an incentive to provide call coverage and is preferable to imposing onerous call requirements through bylaws that create the potential to discipline nonconforming physicians.

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