

BULLETIN

OMC 2003-04

TO: All Health Maintenance Organizations Doing Business in New Jersey

FROM: Marilyn Dahl, Senior Assistant Commissioner, New Jersey State Department of Health and Senior Services

DATE: October 22, 2003

RE: Emergency Department Medical Screening Examination Fees

The Department of Health and Senior Services ("Department") is issuing this bulletin to remind all health maintenance organizations ("HMOs") doing business in New Jersey of the requirement to provide benefits for a medical screening examination when members present in the emergency department of a hospital. The Department also intends for the bulletin to clarify what should be considered as part of a medical screening examination, and thus, those expenses to be considered for coverage either as part of a negotiated screening fee with a network-based hospital, or when reimbursing for services received at a nonparticipating hospital.

In accordance with the federal Emergency Medical Treatment and Labor Act (EMTALA)¹, all Medicare-participating hospitals must provide a medical screening examination to any individual who presents at the emergency department and requests examination or treatment for a medical condition.² Pursuant to N.J.A.C. 8:43G-12, New Jersey regulations require all acute care hospitals in this State to perform a medical screening examination on individuals that present at the emergency department seeking treatment.

New Jersey regulations, at N.J.A.C. 8:38-5.3(b)5, also require HMOs to cover the medical screening examinations performed in accordance with federal and state law, to the extent necessary to determine that an emergency exists.³ The Department is aware that many HMOs have negotiated a fee with their participating hospitals that is intended by the HMOs to bring them into compliance with the requirements of N.J.A.C. 8:38-5.3(b)5. The Department is also aware there are disagreements between some of the HMOs and the participating hospitals as to whether the negotiated fee factually complies with the requirements of N.J.A.C. 8:38-5.3(b)5. The hospitals and the HMOs

¹ EMTALA was enacted in April of 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, and became effective in August of 1986.

² If the hospital determines that the person has a medical emergency, the hospital must then treat the patient until his or her condition is stabilized, or if unable to stabilize that person, arrange for an appropriate transfer of the person to another facility in accordance with federal regulations.

³ Other carriers offering managed care plans in New Jersey are not required to pay for medical screening examinations, per se. Rather, N.J.A.C. 11:4-37.3(b) requires that carriers subject to that rule include a mechanism which reimburses emergency care as if it is always provided by a preferred provider.

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often have a different understanding of what services are actually supposed to be covered by the fee. Frequently, the use of the term “triage” is associated with the negotiated fee.

The Department notes that there is a distinction between the services that fall under the term “triage” and those that fall under the term “medical screening examination.” The two terms represent different concepts. N.J.A.C. 8:38-1.2 defines the term “medical screening examination” as:

an examination and evaluation within the capability of the hospital’s emergency department, including ancillary services routinely available to the emergency department, performed by qualified personnel pursuant to requirements in N.J.A.C. 8:43G-12, which are necessary to determine whether or not an emergency medical condition exists.

The Centers for Medicare and Medicaid Services (CMS) has determined that a medical screening examination is not the same as triage. CMS Interpretive Guidelines specify that triage determines the order in which patients will be seen, not presence or absence of an emergency medical condition. This has always been the Department’s understanding of the term “triage” as well, and the Department concurs with CMS’ position. Triage services are not equivalent to the medical screening examination.

It is apparent that some of the HMOs that have negotiated a “triage” fee assume the negotiated fee covers the costs of the medical screening examination. It is also apparent that some hospitals believe (or believed) the fee was only ever intended to cover costs associated with triage services, and not the costs associated with the medical screening examination. Whether it was reasonable or not, these hospitals had assumed that the costs associated with the medical screening examination would be paid in addition to the negotiated triage fee; the HMOs assumed differently.

The Department makes no value judgment as to whether the negotiations resulted in fair compensation for the services being delivered, nor does the Department take any position on what a reasonable compensation arrangement would be for a negotiated medical screening examination fee. The Department is concerned, however, that such significant misunderstandings have occurred regarding negotiations of rates for services delivered in the emergency department.

To avoid this level of misunderstanding in the future, the Department is cautioning HMOs that if they decide to negotiate a “triage” fee, the Department will assume that the negotiated fee only covers triage services, and that the costs of the medical screening examinations are being paid separately, whether on a negotiated basis or not. Accordingly, when the Department becomes aware that the HMO is paying a “triage” fee for all emergency department visits (in which it is determined that no emergency medical condition exists), and nothing else, the Department will consider the HMO to be in violation of the requirements of N.J.A.C. 8:38-5.3(b)5, and will take administrative action as is appropriate to the situation.

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Similarly, if the Department becomes aware that an HMO is failing to make sufficient reimbursements for the costs of medical screening examinations to hospitals with which the HMO has no negotiated medical screening examination fee, such that hospitals are trying to make members liable for some or all of the costs of the medical screening examination in excess of any copayment (deductible or coinsurance) that the member may owe under the terms of the health benefits plan, the Department will take administrative action. If the HMO is denying reimbursements for some of the services on the basis that these services were not medically necessary for the purposes of determining whether an emergency medical condition existed, then that utilization management determination may be appealed by the member through the internal utilization management appeal process (and the external utilization management appeal process, if necessary), or the appeal may be made by the health care provider on behalf of the member with the member's consent.

On the other hand, the Department will not take action with respect to payments of a negotiated fee referred to as a medical screening examination fee, regardless of whether the negotiated fee is considered "reasonable" by all parties involved. The fee is a point of negotiation, with which the Department will not interfere. It is up to the parties to work that situation out on their own.

Also note that HMOs should be assuring that separate bills made by emergency department physicians (or ancillary providers) for services related to the medical screening examination (that are medically necessary to determine whether an emergency medical condition exists) are not made the liability of the HMO's members. The Department's belief is that in situations in which medical screening examinations are provided at participating hospitals, no such billings should be occurring at all, and that it is incumbent upon the HMO to work with the hospital and the physicians to address this issue. While the HMO will have less ability to address the situation at nonparticipating facilities, it is still incumbent upon the HMO to assure that their members are not penalized for using a nonparticipating emergency department with respect to the medical screening examination.

Questions regarding this matter may be directed to my attention at (609) 984-3939 or Marilyn.Dahl@doh.state.nj.us, or to Sylvia Allen-Ware, Director of the Office of Managed Care, at (609) 633-0660 or Sylvia.Allen-Ware@doh.state.nj.us, or by fax at (609) 633-0807.