August 10, 2023

Ruth Smejkal
Senior Rules Analyst
Arizona Department of Health Services
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007

Dear Ms. Smejkal,

Thank you for the opportunity to comment on the August draft revisions to Article 9 of the ground ambulance rules. I am commenting on behalf of the Arizona Hospital and Healthcare Association (AzHHA). AzHHA is a statewide association of 80 hospital and affiliated health system members, representing short-term acute care, behavioral health, post-acute care, and critical access hospitals, as well as their affiliated clinics and staff.

Overview

As mentioned in our previous communications, AzHHA greatly appreciates the outreach that the Arizona Department of Health Services (ADHS) has made to all stakeholders during the draft rulemaking process. We thank ADHS for taking the time to listen to our member concerns, especially as they relate to extensive delays in interfacility arrival times. While we see that some of our recommendations on the June draft rule have been incorporated into the August revisions, **we remain very concerned that the August draft does not adequately address the unprecedented and indefensible delays that hospitals are experiencing in response to calls for interfacility transports.**

The certificate of necessity (CON) approach the State of Arizona uses to authorize ground ambulance service operations constitutes monopolies or near monopolies in all areas of the state. It is inexcusable that agencies granted this monopoly are allowed to "park" patients in an emergency department when those patients are in a medical crisis and require transportation to a higher level of care or specialty hospital. Several years ago, the Centers for Medicare & Medicaid Services informed hospitals that "parking" a patient in an ambulance is a potential violation of EMTALA. Ambulance companies who are granted the privilege of a CON should not be allowed to engage in a similar practice.

We acknowledge that CON holders, at times, will need to prioritize responses based on the clinical conditions of patients and limited resources. However, the persistent delays in interfacility transport in many areas of the state are unacceptable. This week, one hospital reported the shortest arrival times for behavioral health patients needing admission to a level I psychiatric hospital was 10-12 hours. Some wait times exceeded 24 hours. Actual transport routinely occurs more than 72 hours after the facility calls for it.

Review of Previous Comments and August Revisions

Under the June draft, arrival times for interfacility transports that met the definition of "time-sensitive" would be assessed like 911 response times. Arrival times for all other interfacility transfers, including those that require a higher level of care, would be based on the CON holder's estimated arrival time or amended arrival time. CON holder's actual arrival time would need to be within 60 minutes of the estimated time of arrival or amended time of arrival for at least 90% of these transports. Noncompliance would be subject to a corrective action plan.

AzHHA provided feedback that the definition of "time-sensitive" in the June draft was too restrictive and could result in dangerous treatment delays for many patients with emergency medical conditions needing a higher level of care than the sending hospital could provide. We recommended the term be revised to include all emergency medical conditions (EMCs) under EMTALA.

We offered an alternative recommendation that ADHS adopt a three-tiered approach, where all EMCs would be considered time-sensitive, but the standardized response times for transfers of patients with certain critical conditions (e.g., a patient needing transport to a level I trauma center) would be shorter.

Under the August draft, the definition of "time-sensitive" is loosened, which AzHHA greatly appreciates. However, a new term, "time-critical," has been introduced. Significantly, under the new draft rule, only arrival times for interfacility transports for conditions that meet the definition of a time-critical will be subject to the 911 response time standard.

Arrival times for time-sensitive and non-time-sensitive conditions will be based on the transport agency's estimated arrival time or amended arrival time. Certificate holder's actual arrival time must be within **120 minutes** of the estimated time of arrival or amended time of arrival for at least 90% of these transports—which is twice as long as the 60 minutes included in the June draft rule.

"Time-critical condition" is defined as a patient's illness or injury for which research has shown that transport to a specialized healthcare institution or higher level of care improves patient outcomes. The rule specifically includes STEMI, stroke, certain traumas, and sepsis. However, other conditions are not excluded. **While we appreciate the flexibility that this language may provide, we are very concerned that conditions not specifically spelled out in the definition will be disputed by CON holders as meeting the definition.**

Recommendations

AzHHA urges the Department to broaden the definition of "response time" to include time-sensitive conditions, using the August draft definition of "time-sensitive condition." If ADHS chooses not to broaden the definition of "response time" as recommended, the Department should alternatively establish a separate performance standard for arrival times for time-sensitive conditions. AzHHA recommends this standard be no more than 30 minutes longer than the standardized response time for 911 dispatches or interfacility transports for patients with time-critical conditions.

We also urge ADHS to revert the compliance threshold for arrival times for non-time-sensitive conditions to within 60 minutes of the estimated time of arrival or amended arrival time as included in the June draft rule. Because CON holders can amend arrival times under the draft rule, they already have considerable ability to extend estimated arrival times.

Thank you for the opportunity to comment on the draft rule. Please do not hesitate to contact me if you have any questions.

Sincerely

Debbie Johnston
Executive Vice President

CC: Rachel Garcia, Bureau Chief, ADHS Emergency Medical Services and Trauma Systems