

CMS – Response from Richard Wild, MD,

CMO, CMS Atlanta Office

Signage in ED- Opioids

**From:** "Wild, Richard E. (CMS/CQISCO)" <[Richard.Wild@cms.hhs.gov](mailto:Richard.Wild@cms.hhs.gov)>

**Date:** January 21, 2014 at 5:46:53 PM EST

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**Subject:** RE: Your inquiry re EMTALA and ED Opiate Signage

Dear Bob,

Thanks for your comments, inquiry, and work on this issue on behalf of ACEP. While the title and some of the responses to questions in the article focus on waiting room posters, our response and policy would include the posting of signs anywhere in the ED that might have either the unintended (or intended) effect of discouraging anyone seeking evaluation or treatment for a painful medical condition before the completion of an appropriate medical screening exam. I am aware of the situation in Ohio and just recently our Chicago Regional Office received an inquiry from the Ohio Department of Public Health to which CMS informed the Ohio state agency that the CMS policy which was reviewed in ACEP Now is national policy. Also, we do remind everyone that EMTALA is a federal statute and would supersede a state or municipal statute, regulation, or directive which is in conflict with the provisions of EMTALA. Accordingly a state initiative that is contrary to EMTALA would not be considered a defense to an EMTALA violation. The CMS policy in a nutshell is that patient educational materials and information should be conveyed to the patient only after an appropriate medical screening examination and appropriate stabilizing treatment is undertaken. Signs posted anywhere in the ED which discourage patients from remaining for the completion of a medical screening exam and appropriate stabilizing treatment are inconsistent with EMTALA.

I should also note that I understand that the national ACEP Board has just last week modified its position on this to also emphasize that signage posted in EDs is discouraged under EMTALA and that patient educational materials should be distributed after completion of an appropriate medical screening exam.

I hope this clarification is helpful and thank you for submitting your question as it will help to inform our analysis and development of further policy guidance in this area.

Sincerely,

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Hi Rick-

I'm working on an ACEP committee on this issue and appreciated your comments to Kevin Klauer that were recently published in ACEP Now. I agree that some pts might be discouraged from seeking care because of the signs.

I worked with Ohio ACEP in responding to the Ohio Governor's Task Force on this last year, and was able to tone down their rhetoric, but they were not dissuaded from pushing ahead with the signage. The CMS position helps significantly in that regard. Thank you. And yes, I am old enough to remember when ACEP advocated for "including severe pain" as an EMC.

My read of the CMS position is that waiting room signs are impermissible, but that pt educ mtls are permitted.

What is not clear is: Would it be permissible to post signs in a patient room in the ED? or in the "body" of the ED? Only those pts in the process of being treated would see it. The signs would be educational in nature.

I ask because of the huge ground swell of interest in such signage and the questions we receive. I realize that it's a balancing act: there are both pts abusing the system to obtain narcotics AND pts legitimately in need of those same drugs.

Please let me know your thoughts on this.

Bob

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