EMTALA Update:
Challenges in Community and Specialty Hospitals

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Learning Objectives
1) Describe the definition and history of EMTALA
2) Recognize Emergency Medical Conditions under EMTALA
3) Define who performs the Medical Screening Examination
4) Explain the implications of EMTALA on patient transfers
5) Understand the EMTALA implications for on-call physicians
6) Describe the legal implications and consequences of EMTALA violations

COBRA / EMTALA
COBRA: Consolidated Omnibus Budget Reconciliation Act
EMTALA: Emergency Medical Treatment And Labor Act

- legislation with the COBRA law

Originally enacted in April, 1986

Originally known as “Anti-Dumping Law”

EMTALA is now essentially the fundamental basis for policies and procedures of all Medicare-participating hospital Emergency Departments

The EMTALA Framework

- Federal Statute 42 U.S.C. 1395 dd
- Federal Regulations 42 C.F.R. 489.20 & 489.24
- Interpretive Guidelines
- Federal Register – All requirements are listed
- Interpretations of the Interpretive Guidelines
- CMS Advisory Bulletins and Guidance
- Case law

Who is Responsible for EMTALA Enforcement?

- Center for Medicare and Medicaid Services (CMS)
- State Department of Public Health
- Office of the Inspector General (OIG) of the Department of Health and Human Services (DHHS) imposes fines
- In January 2005, OIG reiterated that hospitals need to address EMTALA as a compliance program
**PRIMARY FOCUS OF EMTALA**

- ACCESS TO CARE: NO DISCRIMINATION
- MANDATORY MEDICAL SCREENING
- STABILIZATION REQUIREMENTS
- TRANSFER REQUIREMENTS: ANTI-DUMPING

**General Purpose of EMTALA: Guaranteed Access to Care**

Any patient who:

- **Comes** to a hospital (250 yard rule)
- **Requests** evaluation and/or treatment of an **EMC** (Emergency Medical Condition)
- **Must** be provided a **MSE** (Medical Screening Examination)
- If **EMC > Stabilization** (within hospital’s capability)
- **Regardless of his/her ability to pay**

**Does EMTALA apply to my patients, my doctors, my hospital?**

- Any individual who **Comes** to a hospital (250 yard rule)
- All hospitals who participate in Medicare (98% of US hospitals).
- EMTALA is a condition of participation in Medicare!
- All physicians on a hospital’s medical staff, when on-call for the ED

**Basis for 250 Yard Rule**

- Teenagers playing basketball near the hospital – one is shot
- The boy’s friends got him to the edge of the hospital’s driveway and entered the ED to ask for assistance
- Employees refused due to hospital policy (prohibited employees from leaving the building to provide assistance)
- Boy eventually brought into the hospital, later died.
- Hospital cited for EMTALA violation, case later used as the basis for the 250 yard rule.
- Hospital sued by family, settled in excess of $12 million

**Definition of Emergency Medical Condition**

**Prudent Layperson Definition**

- Includes
  - Severe Pain
  - Psychiatric disturbance
  - Substance Abuse
  - Pregnant Women with Contractions
Medical Screening Examination

...the process required to reach, within a reasonable degree of confidence, the point at which it can be determined whether a medical emergency does or does not exist (Interpretive Guidelines - 1998)

• must be provided within the full capability of the hospital including all ancillary services routinely available

What Constitutes a MSE?

• Generally ... vital signs; oral history; physical examination of affected or potentially affected systems; consideration of known chronic conditions
• Any testing needed to determine the presence of an emergency medical condition (e.g., CT scan and LP for possible SAH)
• If screenings for active labor are to be performed in the L&D Unit, the evaluation process must be consistent with that utilized in the ED
• Documentation in ED log and ED record of above as well as final patient disposition

Key Point Regarding “Triage”

TRIAGE DOES NOT CONSTITUTE A MEDICAL SCREENING EXAMINATION!
• Triage is a process of ranking things in terms of importance or priority
  • It entails the clinical assessment of the individual’s presenting signs and symptoms at the time of arrival at the hospital, in order to prioritize when the individual will be seen by a physician or other qualified medical personnel (QMP)
  • Triage does not determine whether the patient has an EMC.

Who conducts the MSE?

• Usually the ED physician.
• Another “qualified medical provider” may be designated in the by-laws by the hospital’s governing body – examples include:
  ☑ Mid-level providers in underserved areas
  ☑ L&D nurses for obstetric patients in OB Dept.
  ☑ Specially trained psychiatric pre-screeners
• CMS reserves the right to disagree with the hospital’s choice of MSE provider
  – retrospectively determining that the provider was “inappropriate”

Qualified Medical Provider

– Authorized by Medical Staff Rules, Regulations or Bylaws
– Credentialed through appropriate processes
– Delineated in policies and procedures
– Appropriate peer review mechanisms in place
– Follow authorized protocol approved by medical staff

What about “Private Patients”?

• Every patient that presents to the hospital for unscheduled care should receive a MSE (in the same manner as every other similar patient) without delay
• If the patient is going to be seen by private physician in the ED, a time limit (i.e. 30 minutes) for the onset of evaluation should be established
Minors and the MSE

- The Medical Screening Exam may not be delayed awaiting a consenting adult. Once the physician has conducted the MSE and determined it is safe to wait, then no further diagnostics or treatment need be performed until the arrival of a parent or other person able to consent for treatment.

Pregnant Female who is a Minor

- May consent for treatment while pregnant.
- After delivery, may consent for child, but not for herself if she remains in the parent household and supported by same.
- May consent for treatment if married and/or emancipated by law.
- *Know your state laws re: minors*

Financial “Screening”

- “It is not impermissible for a hospital to follow normal registration procedures for individuals who come to the emergency department…”
- **BUT….** MSE must not be delayed to obtain this information
  - The hospital cannot obtain authorization for payment or collect co-pay prior to the MSE
  - When the MSE demonstrates no EMC, or the EMC has resolved:
    - The hospital may ask for payment before further evaluation and treatment of non-emergent complaints occurs.

Role and Importance of the Medical Screening Examination

So long as a hospital applies, in a nondiscriminatory manner, a screening process that is reasonably calculated to determine whether an emergency medical condition exists, it has met its EMTALA screening obligation.

No Discrimination

Patients who present with similar signs and symptoms must be handled in the same manner in terms of medical screening examination regardless of third party payer or private physician status

*The basis for standing orders, pathways, and treatment guidelines*

LWBS & AMA

- **LWBS/LWT/LPMSE**
  - Left prior to medical screening examination
- If an individual leaves a hospital prior to medical screening examination, *on his or her own free will* (no coercion or suggestion) the hospital is not in violation of EMTALA
- Likewise no EMTALA violation in setting of AMA discharge if in the absence of coercion or suggestion and at the individual’s free will
- Should be part of PI trending process
Who is NOT covered by EMTALA?

- Individuals the hospital determines do not have an emergency medical condition (EMC), after completion of the medical screening exam (MSE).
- Patients with an EMC who are stabilized.
- Scheduled outpatients or patients admitted to the hospital.

Pre-scheduled care/outpatient services done in the Emergency Department

- Hospital does not have EMTALA obligation for individual presenting to ED who is registered for scheduled outpatient care
  - Examples: suture removal; scheduled pharmaceutical administration (i.e. IV antibiotic)
- Practical tip: assure the individual is not seeking evaluation for an EMC
  - Brief questioning or evaluation by qualified medical person sufficient to establish that no EMC is present

Use of ED for “Non-Emergencies”

- For non-emergency tests:
  - Hospital must be able to document that it is only being asked to collect the specimen, not analyze the test results, or to otherwise examine or treat the individual, or
  - If the individual had a previously scheduled appointment

What about Blood Alcohol Testing?

- Attention to detail is critical
- MSE not required if law enforcement personnel request that emergency department personnel draw blood for a BAT only (for evidence only) and do not request examination or treatment for a medical condition, such as intoxication, and a prudent lay person observer would not believe that the individual needed such examination or treatment, on behalf of the individual

Stabilization and Transfer Issues

Obligations of the Hospital

# 1 - MEDICAL SCREENING EXAM

- If No EMC ----> no further obligation
- If an emergency medical condition exists:
  - STABILIZE ----> no further obligation
  - PROVIDE APPROPRIATE TRANSFER
Inpatients

- EMTALA obligation ends at time of admission
  - Whether or not the individual has been stabilized
  - Includes admitted patients being held in the ED
  - Governed by Medicare Conditions of Participation
- Hospitals cannot admit patients to avoid EMTALA obligation and then transfer inappropriately
- Observation patients are still under EMTALA until full admission as in-patient completed.

“Stable” for Transfer

- EMC is not present
- EMC has resolved
  - “the emergency physician or QMP has determined, within a reasonable degree of medical confidence, that the emergency medical condition has resolved”
- EMC is present
  - Patient has been “stabilized” as far as possible within the limits of its capabilities

CLINICAL STABILITY VS. EMTALA STABILITY

Stabilization does not require final resolution of the emergency medical condition!

Key concept: within the capacity of the hospital

Reasons for EMTALA Transfer

Only two acceptable circumstances for an “appropriate transfer” under EMTALA:
- Medical necessity
- Patient request

Attending physician request is not a legally accepted reason for transfer under EMTALA

Obligation to Accept Transfers

- “Hospitals with specialized capabilities or facilities shall not refuse to accept appropriate transfers of individuals who require such specialized capabilities or facilities if the hospital has the capacity to treat the individual”
- Thus - there is an obligation to accept!

Transferring Hospital Requirements

- Stabilize patient to minimize risks
- Individual or guardian understands reason for and consents to the transfer
- Physician has signed certification for transfer
  - “based upon information available at the time of transfer, the medical benefits of the transfer outweigh the increased risks to the individual from being transferred”
- Certification must contain summary of risks & benefits
Transferring Hospital Requirements

- Document name of accepting individual
- Document name of accepting physician
- Send copies of medical records
- Facilitate appropriate mode of transportation
  - Proper personnel
  - Proper equipment
- Document name of on-call physician who fails to respond

Patient Request for Transfer

- Patient may request a transfer to another institution.
- This request takes the place of the physician's certification.
- The transfer must still be an "appropriate transfer".
- The reason for the patient's request must be charted. 489.24(d)(1)(ii)(A)

Does EMTALA effect only ED physicians?

"On-call" physicians are also obligated to comply with EMTALA.

Hospital Obligations

- Hospital must maintain on-call list of physicians “in a manner that best meets the needs of hospital’s patients” who are receiving services required by EMTALA in accordance with resources that are available to the hospital.
- "Come in vs Call in" response must be defined in by-laws. Times must be documented in logs.
- Physician call schedules must be “reasonable”
  - Logs should be maintained for 5 years
- Services routinely available to inpatients should be available to emergency patients

Obligations of the On-call Physician under EMTALA

- When requested by the emergency physician (or qualified medical provider):
  - Must physically come to the ED and examine the patient within a reasonable* time period
  - Must admit patient if the MD and hospital is capable of caring for that patient.
- Cannot request transfer for convenience only
- New interpretative guidelines clarify that physicians can be on-call at more than one hospital simultaneously, and do surgery when on-call (except CAHs who are reimbursed for having physician on-call)

*The expected response time should be stated in minutes in the hospital’s policies.

OBLIGATIONS OF THE MEDICAL STAFF

Physicians must accept all patients within the scope of their privileges

- Even if they are sub-specialists within a department
- “Expertise greater than that of the ED physician”

An on-call physician cannot refuse to accept a patient based on inconvenience, "lack of comfort in treating the patient", or payor class; and thus "force" a transfer.
OBLIGATION TO REPORT

Hospitals and physicians are obligated to report any suspected potential EMTALA violation.

**Most common allegations and violations:**
- Failure of hospital to accept patient in transfer
- Improper stabilization prior to transfer
- Failure of on-call physician to fulfill obligation
- Inadequate documentation

Who Has Traditionally Turned In Hospitals for EMTALA Violations?

- Receiving hospitals
- Patients
- Nurses and physicians at transferring hospitals

Usually result from inappropriate discharge or transfer

EMTALA Violation: What’s the Big Deal?

- Termination of Medicare Provider Agreement
- Fines per violation (up to $50,000 for hospital and physician)
- Patient can sue in a civil lawsuit
  - Civil penalties not usually covered by typical professional liability policies (considered “intentional tort”)
- Receiving hospital suffering financial loss can sue to recover damages
- Notification of: Office of Civil Rights, IRS, Joint Commission, DOJ

Recent Violations of EMTALA

- Hospital & physician in MD settled for $60,000 fine charged with failure MSE, patient only received VS check before discharge.
- TN hospital being investigated for allegedly refusing MSE of a critically injured patient brought in by EMS. During the investigation, CMS discovered 5 additional violations
  - Fines expected to exceed $200,000

Scenario 1

**Q:** A pt comes to the window and asks the triage nurse to tell him if a wound looks infected so he can decide whether to be seen now or wait to see his PMD. What should you do?

**A:** Explain to the pt that he must sign in to receive a MSE and/or further exam and treatment by an ED physician.

Scenario 2

**Q:** Police bring the driver of an MVC to your ED for a blood alcohol test. The driver appears uninjured and no request is made for an exam. Does the driver have to have an MSE?

**A:** MSE is not required if law enforcement personnel request that ED personnel draw blood for a BAT only (for evidence only) and does not request examination or treatment for a medical condition.
Scenario 3

Q: A homeless man presents to the ED to be seen for a headache. Should he be seen?
A: Yes, he is entitled to receive an appropriate medical screening examination. In the event that it is determined he has an emergency medical condition, he also is entitled to further examination and treatment as may be necessary to stabilize the condition or arrange for an appropriate transfer to another medical facility.

KEY POINTS

- EVERY patient who presents should receive a medical screening examination.
- Triage does not equal medical screening.
- Don’t seek pre-authorization or collect co-pays before the MSE is completed.
- EMTALA Rights signage must be posted in a conspicuous place in common languages

KEY POINTS

- EMTALA applies to the entire hospital, not just the Emergency Department (250 yard rule).
- Nurses and registration clerks can be held liable in a civil lawsuit for EMTALA violations, not just the hospital or physician.
- All patients requesting medical treatment must receive a MSE!!!

DON’T DISCRIMINATE PATIENT CARE BY THE ABILITY TO PAY….Every ED Patient gets a Medical Screening Exam!!!

Questions?
Thank you for your attention!