24-Hour Holds — Why, When and How to Use in the ED

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Psychiatric Patients in the ED

The Challenge

- Worries
- Obstacles
- Risks
- Strategies
- Execution

- Ten Worries, Obstacles and Risks that impact handling of psychiatric patients in the ED
Does LPS mean “Lost in Patient Space”?

10 Worries, Obstacles and Risks

1. Intake – Triage and the Medical Screening Evaluation
   – CMS Guidance: “For individuals with psychiatric symptoms, the medical records should indicate an assessment of suicide or homicide attempt or risk, orientation, or assaultive behavior that indicates danger to self or others.”
   – Screening for a medical condition
   – Dealing with the combative or non-cooperative patient
   – Refusal of examination or treatment
10 Worries, Obstacles and Risks

2. Psychiatric EMC v. 5150 Hold
   – There is nothing in the EMTALA statute that addresses involuntary holds
     • This is a state process
     • EMTALA takes precedence over conflicting state law, but not more stringent state laws that do not conflict with EMTALA
   – EMTALA surveyors often use the involuntary hold as a proxy in determining the presence of a psychiatric EMC

2. Psychiatric EMC v. 5150 Hold (cont.)
   Similarities, but not congruence –
   – A psychiatric EMC applies to any person based on a clinical judgment of an ED physician or other qualified professional designated by the medical staff
   – 5150 hold is applied to a person based on probable cause by a peace officer or a county-authorized professional as a legal mechanism to take a person involuntarily to a designated facility for an assessment of his/her behavioral health condition
10 Worries, Obstacles and Risks

2. Psychiatric EMC v. 5150 Hold (cont.)
   Similarities, but not congruence –
   – A psychiatric EMC may not meet the probable cause standard for a 5150 involuntary hold
   – A 5150 involuntary hold does not always mean that a person has a psychiatric EMC
   – A determination that a patient’s psychiatric EMC is stabilized does not itself alter the status of a 5150 involuntary hold
   – Documentation must be clear as to whether the ED physician has determined if the psychiatric EMC is stabilized

3. Holds – 5150
   – No recognition under EMTALA!!!
   – Patient arrives on a 5150 hold written by a peace officer –
     • Is it in effect if the peace officer leaves?
     • Is it enforceable if the peace office leaves?
   – Same issues if hold written by a crisis team or other designated professional
   – What is the duration of the hold?
10 Worries, Obstacles and Risks

3. Holds – 1799.111
   – Applies only to a non-designated hospital, and licensed staff/ED physicians in the hospital
   – Framed as an immunity statute – civil or criminal liability
   – Does not appear to be widely used by ED physicians

3. Holds – 1799.111
   – Patient, due to a mental disorder, is a danger to self/others or gravely disabled
   – Documented repeated efforts to arrange a transfer
     • Efforts must begin at the time the ED physician determines when the patient will be “medically” stable
     • Contacts cannot begin after the time of medical stability
10 Worries, Obstacles and Risks

3. Holds – 1799.111
   Requirements (cont.)
   – The patient cannot be detained more than 24 hours (when does the clock start?)
   – There is probable cause for detention
     • Probable cause not defined?
     • Same as 5150 standards?
   – For detention > 8 hours
     • Discharge or transfer must be delayed due to continuing care, observation and treatment, and
     • Patient still meets criteria for detention

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10 Worries, Obstacles and Risks

3. Holds – 1799.111
   – Limited to 24 hours, which is credited if patient is later placed on a 72-hour under 5150
     • Does this mean that a 5150 hold can be written in the hospital after the 24 hours has expired?
     • If ED physicians can write a 24-hour hold, why not a 72-hour hold?
10 Worries, Obstacles and Risks

4. Elopement
   – Who is responsible to ensure that an involuntary patient does not elope?
   – If on a 5150 hold, can it be enforced?
   – If on a 1799.111 hold, can it be enforced?
   – Should a peace officer or designated professional be responsible to arrange for custodial arrangements if he/she leaves the hospital?

10 Worries, Obstacles and Risks

4. Elopement (cont.)
   – What resources are available to prevent elopement by involuntary patient?
   – Can the patient leave the ED if on a hold?
   – Is elopement of a psychiatric patient an EMTALA violation?
     • Does it make a difference if the patient is involuntary, voluntary or pending a determination to write a hold?
10 Worries, Obstacles and Risks

5. Monitoring and Stabilizing Treatment
   – EMTALA treats psychiatric patients the same as medical patients –
     • Must continue to monitor and evaluate a psychiatric condition consistent with the condition of the patient
     • Must provide stabilizing treatment within your capability and capacity
   – Use of telemedicine for psychiatric consultation
   – Is there a plan for crisis intervention?
   – What does the record documentation show?

10 Worries, Obstacles and Risks

Monitoring –

CMS 2567 — “… the facility failed to ensure that two … patients who presented to the … ED … with psychiatric diagnoses (including suicidal and homicidal ideations or an altered level of consciousness) received ongoing assessments and monitoring to ensure stabilization of an emergent condition … These failures resulted in the potential for the undetected deterioration of an emergency medical condition which would place patients at risk for harm, including elopement.”
10 Worries, Obstacles and Risks

6. Transfer of a Psychiatric Patient
   – EMTALA treats transfers of psychiatric patients the same as medical patients
   – Know the conditions for admission at designated facilities
   – A receiving facility cannot refuse acceptance for insurance reasons or residency, but …
     • Most PHFs and all CSUs are not Medicare certified (no EMTALA obligation to accept a transfer)

7. Discharge of a Psychiatric Patient
   – Can a 5150 patient be discharged if ED physician believes that patient’s psychiatric condition is stabilized even if hold is still applicable?
   – Can a county authorized professional lift a hold in an ED of a non-designated hospital?
     • Must the hospital follow the recommendation actions of the authorized professional?
     • Does the hospital have to arrange for transport if the patient does not have the means to go home?
10 Worries, Obstacles and Risks

7. Discharge of a Psychiatric Patient (cont.)
   – CMS 2567 –
   “… the hospital failed to comply with … [EMTALA] when Patient 1 was diagnosed with a psychiatric emergency medical condition and the hospital did not fully implement the stabilizing measures as determined by the mental health crisis worker … The stabilizing measures identified by … [the crisis worker] were located in Patient 1’s home town and Patient 1 was discharged without a means to get to her home, a distance of [___] miles from the hospital.”

10 Worries, Obstacles and Risks

8. Admission for Inpatient Care
   – Is EMTALA over?
   – What happens to the 5150 hold?
   – If a patient is medically stable, but has a psychiatric EMC, what is the effect of admitting the patient in order to protect the patient or others?
9. When Does the 72-Hour Clock Run Out?

– The conflict –
  • 5150(a): take a person into custody “for a period up to **72 hours** for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment …” in a designated facility
  • 5151: if a designated facility “admits the person, it may detain him or her for evaluation and treatment for a period not to exceed **72 hours.**”

– Resolution: one clock or two?
10 Worries, Obstacles and Risks

10. Why is LPS a Mess???
- Why don’t we know when the 72-hour clock starts?
- Why does DHCS exercise no responsibility to interpret LPS?
- Why does each county decide what the law is?
- Why are professionals authorized to write a hold in one county not authorized to do so in an adjacent county?

10. Why is LPS a Mess??? (cont.)
- Why are custodial officers or professionals not required to arrange placement?
- Why are ED physicians not permitted to write holds in most counties?
- Why is copy of a 5150 application treated as a worthless document and used to deny placement or a transfer?
- Why do county departments of mental health not view psychiatric patients in an ED as their responsibility if the patients need a hold, evaluation and treatment under LPS?
Strategies for 2016

1. In-Hospital Compliance
   – Get your physicians and staff on the same page –
     • EMTALA
     • LPS
     • Patient, staff and visitor safety and security
   – Messaging – explaining the reasons why psychiatric patients wait hours and days for transfer and assessment
   – Staff feedback – what works? What doesn’t work?
Strategies for 2016

2. Documentation
   – Too many EMTALA violations are based on poor or absent documentation
   – Make sure that you document continued monitoring and progress notes in the same manner as medical patients
   – Know the requirements for documenting a 1799.111 hold
   – Know the requirements for an appropriate MSE and discharge plan

Strategies for 2016

3. Encourage best practices
   – Develop and implement best practices for handling psychiatric patients
   – Use forms or checklists as necessary
   – Know what resources are available outside of the ED or the hospital
Strategies for 2016

4. Expanded capabilities
   – Consider additional resources for patient evaluation, management and crisis intervention
   – Seek efforts to link designated facilities and/or professionals with EDs by telemedicine
   – Look for space to maintain psychiatric patients awaiting transfer to open up ED capacity

The Joint Commission
• 1/1/14 – new Leadership (LD) standard (“the patient flow standard”) includes requirement that in hospitals that have determined there is a population at risk for boarding due to behavioral health emergencies, the hospital leadership will communicate with behavioral health care providers and/or authorities serving the community to foster coordination of care for this population
• Elements of Performance (EP) standards include requirements for a process that supports better patient flow, locations for patients that are safe, monitored, and cleared of dangerous items, orientation and training for any staff caring for such patients (including for example, medication protocols and de-escalation techniques), and assessments, reassessments and care that is consistent with the patient’s identified needs
The Joint Commission

• (PC.01.01.01): “Hospitals that do not primarily provide psychiatric or substance abuse services have a written plan that defines the care, treatment and services or the referral process for patients who are emotionally ill or who suffer the effects of alcoholism or substance abuse.”

Strategies for 2016

5. Resources –
   – Expand your database of and relationships with community resources for psychiatric patients
   – Interface with patient advocates for 5150s
   – Keep a current list of designated facilities, including their admission criteria
Strategies for 2016

6. Crisis Stabilization Units
   – Learn their capabilities and limitations
   – Know their admission criteria
   – Consider a transfer agreement
     • But consider EMTALA requirements for a transfer;
     • And the views of CDPH

Strategies for 2016

7. Be More Proactive
   – Engage your county mental health department to acknowledge the problem and be part of the solution
   – Seek authority for designation of ED physicians to write a hold
   – Seek authority for ED physicians to release a hold
   – Ask the department when the 72-hour clock starts
   – Publicize the problems if ignored by the department
   – Reach out to the county patient advocates
   – Keep at it!!!
Strategies for 2016

8. Be More Assertive
   – Fight back!!!
   – Don’t go it alone!!!
   – Work with other hospitals and stakeholders
   – Bring your issues to regional hospital meetings and CHA
   – Bring your issues to the Board of Supervisors and other public officials

Strategies for 2016

9. Implement the Strategies from the Joint Session
Strategies for 2016

10. Smile at least once a day

Things are not going to change for the better over night
So
Try to find some sunshine on good work that you are doing

Questions?
Thank you

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