Overview

- Are we subject to EMTALA?
- Do we operate a dedicated emergency department?
  - If so, what are we required to do?
- What is an emergency behavioral medical condition?
- When must we accept a transfer?
- When must we report an EMTALA violation?
- What do we do if we disagree with the views of the survey team?
- What else is new?
Is a Behavioral Hospital Subject to EMTALA?

**YES —**
- If your hospital participates in the Medicare program
- However, your EMTALA obligations may vary depending on whether you operate a dedicated emergency department (DED)

Do We Operate a Dedicated Emergency Department?

Case Example:
- Hospital has dedicated space and staff for assessing outpatients with potential behavioral crises
  - Patients seen by the service include referrals by local agencies, and are usually scheduled for appointments
  - However, a number of patients arrive each week without an appointment, some of whom are determined to have a behavioral emergencies and are treated and/or admitted
- Is the hospital operating a dedicated emergency department?

Do We Operate a Dedicated Emergency Department?

Three Ways to EMTALA Screening Obligation
1. Licensed emergency department
2. Any department or service held out to the public (e.g., signage, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment
3. One-third of unscheduled outpatients required treatment of an emergency medical condition on an urgent basis
What are the Implications of Operating a “DED”?

All EMTALA obligations are operative:
- EMTALA-required signage
- EMTALA-required central log of patients presenting to your DED for examination or treatment of medical and behavioral conditions
- EMTALA-compliant MSE of patients presenting to examination or treatment of medical/behavioral conditions
  - Screening within the capability of the hospital

DED Prevention

- Review your ads, signage, advertising, brochures and educational materials
  - What are you representing to the public?
  - Ensure the community knows your hospital does not provide emergency services
- Monitor walk-ins on a yearly basis
  - If 33.3% or more walk-ins receive treatment for an emergency medical condition, EMTALA applies

What if We Do Not Have a DED?

- If the hospital does not have a DED, it must comply with §482.12(f)(2) of the Medicare conditions
  - If emergency services are not provided at the hospital, the governing body must assure that the medical staff has written policies and procedures for appraisal of emergencies, initial treatment, and referral when appropriate
- Bottom line – the hospital must have the capability to provide basic emergency care interventions within your capability
Appraisal, Initial Treatment and Referral

- Hospital must ensure that an RN is immediately available as needed to provide care
  - At least one RN must be one that is qualified to conduct an assessment that enables him/her to recognize the need for emergency care
- Physician, on-site or on-call, must provide appraisals or clinical direction to on-site staff conducting the appraisal

Appraisal, Initial Treatment and Referral (cont.)

Expectation that hospital evaluates the patient population in order to anticipate potential emergency scenarios and develop the policies, procedures and staffing that would enable it to:

- Provide safe and adequate initial treatment of an emergency; and
- Address determine if an individual requires referral or transfer

What is a Behavioral Emergency Condition?

EMTALA Regulations:
Medical condition (including severe pain, psychiatric disturbances or chemical dependency abuse) manifesting itself by acute symptoms of sufficient severity so that the absence of immediate medical attention could reasonably be expected to result in:

- Placing the health of the patient (or an unborn child) in serious jeopardy; or
- Serious impairment of bodily functions; or
- Serious dysfunction of any bodily organ or part
What is a Behavioral Emergency Condition?

**EMTALA Interpretive Guidelines:**
In the case of psychiatric emergencies, if an individual expressing suicidal or homicidal thoughts or gestures, if determined dangerous to self or others, would be considered to have an EMC.

**California Law:**
“Psychiatric emergency medical condition” means a mental disorder that manifests itself by acute symptoms of sufficient severity that it renders the patient as being either of the following:

(A) An immediate danger to himself or herself or to others; or
(B) Immediately unable to provide for, or utilize, food, shelter, or clothing, due to the mental disorder

H&SC Section 1317.1(k)

Stabilization of an EMC

**When is an Emergency Condition Stabilized?**
**EMTALA regulations:** when no material deterioration is likely, within reasonable medical probability, to result from or occur during the transfer of the patient to another medical facility.
Stabilization of Behavioral Emergency Condition

EMTALA Interpretive Guidelines –
Psychiatric patients are considered stable when they are protected and prevented from injuring or harming him/herself or others. The administration of chemical or physical restraints for purposes of transferring an individual from one facility to another may stabilize a psychiatric patient for a period of time and remove the immediate EMC but the underlying medical condition may persist and if not treated for longevity the patient may experience exacerbation of the EMC. Therefore, practitioners should use great care when determining if the medical condition is in fact stable after administering chemical or physical restraints.

Inpatients

✓ The EMTALA obligations are terminated when an individual is admitted for inpatient care
✓ An “inpatient” is “a person who is has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services”
✓ Inpatient status includes admitted patients who are “boarded” in the ED waiting for a bed

Do Not Forget …

EMTALA applies only to emergency patients who have an EMC —
- Inpatient transfers are not covered by EMTALA!
- An emergency patient with a stabilized EMC, as determined by the sending physician, is not covered by EMTALA
Who Must Report an EMTALA Violation?

ONLY A RECEIVING HOSPITAL!!!

- Self-reporting is optional
- When is reporting required?
  - Any time that a receiving hospital has reason to believe that it may have received an individual who was discharged or transferred from another hospital with an unstabilized EMC in violation of the EMTALA requirements
  - Report within 72 hours of the occurrence
  - Report to CMS or CDPH

On CMS’ Radar: Recipient Psychiatric Hospitals

- The regulations specifically states “All Medicare Participating Hospitals”
- The regulation also defines an emergency medical condition as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances and/or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in placing the health of the individual in serious jeopardy
  - CMS has further defined this as suicidal and/or homicidal patients

Recipient Psychiatric Hospitals

- CMS has received numerous complaints that psychiatric hospitals are asking for payment, then refusing to accept unstable suicidal and/or homicidal patients and patients unstable psychiatric disturbances
- It is the determination of the sending hospital whether the patient is psychiatrically unstable
- The EMTALA obligation is over when the patient’s emergency medical condition is stabilized
Who Enforces EMTALA?

Disagreements with EMTALA Survey Findings?

Make sure that you fully understand –

- The facts of your case or cases,
- The documentation in the patient record(s), and
- What your staff has reported to the survey team
- Why you feel your case is compliant with the regulation

Disagreements with EMTALA Survey Findings?

1. CMS Regional Office “is strongly encouraged to share as much information with the hospital as possible in accordance with (HIPAA) regarding the complaint and investigation”
   - The Regional Office may also include any facts about the violation, a copy of any medical reviews (the identity of the reviewer must be deleted), and the identity of the patient involved (not the identity of the complainant or source of the complaint)
Disagreements with EMTALA Survey Findings? (cont.)

2. The hospital has the opportunity to present evidence to CMS that it believes demonstrates its compliance and the opportunity to comment on evidence CMS believes demonstrates the hospital’s noncompliance.

Disagreement with EMTALA Survey Findings?

- CMS requests you present to the Regional Office within 10 days of receiving the Statement of Deficiencies evidence that the violation did not exist.
- Recommend that the hospital request a copy of the 5-day QIO report in connection with cited cases.

Disagreement with EMTALA Survey Findings?

- Communicating with CMS —
  - Letters from expert witnesses
  - Documents identified after the survey was completed
  - Interviews from staff/patients unreachable during the survey
- NOT:
  - Comments about CMS’ and CDPH’s misinterpretation of the regulation
  - Case law

BE POSITIVE!!!
Health Services Advisory Group (HSAG) Hearings

- If your case is referred to HSAG for a 60-day review, **DO NOT IGNORE THE HEARING**
- Prepare for the hearing
  - Written materials
  - Oral testimony
  - Post-hearing submission

New Developments

Must all behavioral patients with emergency conditions be transferred only to another Medicare-participating hospital?

New Developments

Case Example:
- Local police bring an individual to a hospital emergency department under a 5150
- ED physician determines that there is a behavioral emergency but stabilizing treatment is beyond the hospital’s capability
- The patient may be a candidate for transfer to a crisis stabilization unit (CSU) for resolution of the emergency

Can the hospital make an EMTALA transfer to the CSU?
New Developments

CMS Letter (11-12-09)
- An appropriate transfer under EMTALA does not require in all cases that the receiving facility must be a hospital. A transfer to a CSU or other non-hospital facility is not automatically a violation of EMTALA.

CMS Letter (11-12-09) (cont.)
- However, the transferring physician, in certifying the transfer, must have a reasonable clinical confidence that the CSU has the present capability to stabilize the patient’s behavioral emergency.
  - If the sending physician does not have the clinical confidence that the CSU can stabilize the condition, the CMS analysis implies that the physician should arrange a transfer to a level of care higher than the CSU (such as a psychiatric health facility or an acute psychiatric facility).

Note: the CSU is not subject to EMTALA.

Thank You

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