EMTALA AND PSYCHIATRIC PATIENTS

Behavioral Health Directors’ Consortium Meeting

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DEVELOPMENT OF EMTALA

- As individuals moved from tradition indemnity coverage to managed care plans, hospitals were forced to absorb the cost of emergency care.

- ERs began turning away patients who could not pay.

- It is estimated that prior to the passage of EMTALA, over 250,000 inappropriate transfers of medically unstable patients occurred in 1986 alone.
The Government Steps In

- Originally, only hospitals built under the Hill-Burton Act (1946) were obliged to offer emergency treatment to those unable to pay.

- The impetus for EMTALA came from highly publicized incidents where hospital emergency rooms allegedly failed to provide care based only on a patient's inability to pay.

- EMTALA was enacted to expand the obligation to provide specified emergency care to all hospitals that participate in the Medicare program.
Purpose of EMTALA

- To provide an “adequate first response to a medical crisis for all patients.”

- Some translate EMTALA’s purpose as: “to prevent hospitals from dumping or refusing to care for indigent patients.”

- Technically, EMTALA outlines the legal responsibilities of all hospitals that participate in the Medicare program to adequately evaluate, stabilize, and appropriately transfer patients regardless of ability to pay.
Requirements of EMTALA

If a patient presents at an emergency department, a hospital must:

- Provide an appropriate medical screening exam to determine whether an emergency medical condition exists.
- If no emergency medical condition exists, the hospital’s obligation to the patient is concluded.
Requirements of EMTALA, cont’d

If an emergency medical condition does exist, the hospital must either:

- Stabilize and discharge the patient;
- Admit the patient for further treatment; or
- If the patient cannot be stabilized or treated, transfer the patient to another facility under specific conditions.
Definition of Emergency Department

- When EMTALA was first enacted, the emergency department was narrowly defined as a “specially equipped and staffed area of the hospital (that) used a significant portion of the time for initial evaluation and treatment of outpatients and emergency medical conditions.”

- Over time, often because of outrage caused by specific cases, some EMTALA requirements were expanded to encompass the entire hospital grounds, including parking lots, sidewalks, driveways, and any building owned by the hospital and located within 250 yards of the building.
The emergency department must provide a medical screening exam to any patient who requests treatment (regardless of that patient’s ability to pay) to determine whether a medical emergency condition exists.

The exam should be comparable to an exam “offered to other patients presenting similar symptoms” and must be appropriate to the patient’s signs and symptoms, as well as the capability and capacity of the hospital.
Personnel Performing Medical Screening

- A hospital must formally determine who is qualified to perform the initial medical screening.

- Non-physicians may perform medical screenings but these individuals must be identified in the hospital by-laws or in the rules and regulations of the medical staff.

- Making informal appointments that can frequently change is not acceptable.
Definition of Emergency Medical Condition

An **emergency medical condition** is the presence of acute symptoms of such severity that the absence of immediate medical attention could reasonably be expected to:

- Place an individual’s health in serious jeopardy;
- Cause serious impairment to bodily functions; or
- Cause serious dysfunction of any bodily organ or part.
Psychiatric Conditions Can Be Emergency Medical Conditions

An individual expressing suicidal or homicidal thoughts or gestures, if determined to be dangerous to self or others, would be considered to have an emergency medical condition.
Stabilizing Patients with Emergency Medical Conditions

If an emergency medical condition exists, the hospital must:

- Provide treatment until the patient is stabilized.
- If patient can’t be stabilized, transfer the patient to a medical facility that is better able to provide the necessary treatment.
- The transfer of the patient must be based on the hospital’s inability to provide care, not on the patient’s financial circumstances.
Stabilizing for Discharge

A patient is considered stable and ready for discharge when, with reasonable clinical confidence, it is determined that the individual has reached the point where his/her continued care, including diagnostic work-up and/or treatment, could be reasonably performed as an outpatient or later as an inpatient, provided the individual is given a plan for appropriate follow-up care as part of the discharge instruction.
Stabilization of Psychiatric Conditions

- An individual is considered stable when no material deterioration of his/her condition is likely to result.

- Psychiatric patients are considered stable when they are protected and prevented from injuring or harming themselves or others.

- Alleviation of acute symptoms will not automatically constitute stabilization.
Stabilization of Psychiatric Conditions, con’t.

- 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* emergency medical condition.

- If the underlying condition persists and is not treated for longevity, the patient may experience exacerbation of emergency medical condition.

- Practitioners must use great care when determining if the medical condition is stable after administering chemical or physical restraints.
If a patient is unstable and must be transferred, the transferring hospital must:

- Provide medical treatment, if possible, to minimize the risk of transfer;
- Obtain patient’s written consent for transfer;
- Provide signed certificate of transfer;
- Assure that the transfer takes place with qualified personnel and equipment; and
- Send copies of medical records related to the emergency condition.
Transferring Psychiatric Patients

Hospitals are not relieved of their EMTALA obligations to screen, provide stabilizing treatment and/or appropriate transfers because of prearranged community or State plans that have designated specific hospitals to care for selected individuals.
Transferring Psychiatric Patients, con’t

■ If, after conducting an appropriate medical screening and/or stabilizing a patient, a hospital needs to transfer an individual to another hospital, it may elect to transfer the individual to a facility designated by State or local laws.

■ The existence of a State law requiring transfer of certain individuals to specific facilities is *not* a defense to an EMTALA violation for failure to provide an appropriate medical screening or stabilizing treatment.
EMTALA Obligations End When:

- No emergency medical condition exists;
- There is an emergency medical condition, it is resolved and the patient is discharged;
- There is an emergency medical condition and the patient is admitted for further treatment; or
- There is an emergency medical condition, the hospital does not have the capability or capacity to treat the condition, the patient is stabilized for transfer and the patient is appropriately transferred.
Obligations of Community Centers

- Community Centers are required to provide crisis screenings and assessments for individuals experiencing a psychiatric emergency.

- The screening is utilized to determine if the individual is a threat to himself/herself and/or to others.

- The assessment is performed to determine if the individual requires inpatient hospitalization at a State-funded facility.
Relationship between Hospital and Community Center

- Performance of screening and assessment by community center personnel does not automatically relieve a hospital of its EMTALA obligations.

- Determination that an individual requires treatment at and is appropriate for admission to a State-funded facility does not relieve a hospital of its EMTALA obligations.

- Transfers between community hospitals and State-funded hospitals must comply with EMTALA.
QUESTIONS
Question 1

• Can a hospital send an ER patient to an emergency service center without a “doctor to doctor” transfer?

• If the emergency service center is not a hospital, an ER will not be allowed to send a patient to the emergency service center until the patient is stable and appropriate for discharge. Under such circumstances, a “doctor to doctor” transfer is not required.
Question 2

- Can a hospital send a patient from an ER to a Center for screening based on an MH warrant?

- If the patient has arrived at the ER, the hospital must comply with the requirements of EMTALA. If the patient has an emergency medical condition, including a psychiatric condition, and is not stabilized, he/she must either receive the treatment necessary to stabilize his/her condition or if the hospital does not have the capability, the patient must be appropriately transferred to a facility able of care for the patient.
Question 3

• Are the legal obligations placed on a hospital under EMTALA and the legal obligations placed on a Center with regards to patients with psychiatric emergency medical conditions the same?

• No, the requirements placed on each are different and will be enforced separately.
Question 4

- Are there rules on how hospitals prioritize patients in the emergency department?

- Yes, hospitals must have protocols regarding the triage of emergency patients and can prioritize based on the presenting signs and symptoms of a patient. However, they cannot discriminate or deny emergency services based on diagnosis.
Question 5

• Can Center personnel be required to screen hospital ER patients regardless of payor source?

• The Center may have an obligation under state law to provide a screening, but under what circumstances a hospital can allow such a screening under federal law is a separate issue.

Under EMTALA, a medical screening must be conducted by an individual(s) who is determined qualified by the hospital’s bylaws or rules to meet its written emergency procedures and anticipated needs of the facility. If the personnel sent by the Center have not been formally determined, in advance, to meet the specified requirements of the hospital’s bylaws or rules, there may be an EMTALA violation. Further, if the hospital is not a state facility and it is utilizing Center staff to perform a function it is required to perform by law, it is possible that an issue arises regarding the use of state funds without payment.