

# EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT

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# Goals

- ▶ Review the intent of the Emergency Medical Treatment and Labor Act (EMTALA).
- ▶ Review key definitions used for EMTALA compliance.
- ▶ Review requirements for patient transfer.
- ▶ Review hospital responsibilities for on-call coverage.
- ▶ Review possible EMTALA violations.

# EMTALA Compliance: Why?

- ▶ Violations may result in
  - Patient harm
  - Termination of hospital Medicare provider agreement
  - Termination of physicians from the Medicare/Medicaid program
  - Fines up to \$50,000 per violation if 100 or more beds (\$25,000 per violation if fewer than 100 beds)
  - Physician fines—up to \$50,000 per violation
  - Civil suits against hospitals

# EMTALA: It's the Law

- ▶ The Emergency Medical Treatment and Labor Act (EMTALA) is a federal law intended to prevent hospitals with dedicated emergency departments (EDs) from refusing to treat patients or transferring them to public or charity hospitals because the patients are unable to pay, are uninsured, or are covered by Medicare or Medicaid.

# EMTALA Signage

- ▶ Post **conspicuously** in all dedicated ED entrance(s), waiting room(s), and admitting and treatment areas.
- ▶ Specify EMTALA rights of individuals with emergency medical conditions and women in labor.
- ▶ Indicate whether facility participates in Medicaid.
- ▶ Keep wording clear and simple.
- ▶ Ensure signage is in languages understandable by population served by the hospital.

# Who Is Protected by EMTALA?

- ▶ Individuals who present to the ED and request care for a medical condition
- ▶ Individuals who present on hospital property (main campus and hospital-owned buildings within 250 yards of the hospital) requesting care or reasonably appearing to need care for what may be an emergency medical condition
- ▶ Individuals in hospital-owned and -operated ambulances, unless diverted under emergency medical services (EMS) protocols
- ▶ Individuals who present for medical treatment in the ED who are in nonhospital ambulances on hospital property

# Key EMTALA Definitions

- ▶ “Dedicated emergency department”
- ▶ “Comes to” the hospital
- ▶ “Hospital property”
- ▶ “Emergency medical condition”
- ▶ “Medical screening examination”
- ▶ “Stabilize”
- ▶ “Appropriate transfer”

# Who Must Comply with EMTALA?

- ▶ Medicare–participating hospitals (including critical–access facilities) with a **“dedicated emergency department”**
  - Licensed by the state as an emergency room or department
  - Holds itself out to public as provider of emergency care, **or**
  - 1 / 3 of visits in previous calendar year were for emergency care
- ▶ **“Labor and delivery unit” or “psychiatric unit” may be a “dedicated emergency department.”**



# Comes to the hospital

- ▶ EMTALA applies to:
  - Patient who comes to dedicated ED if
    - Request for exam or treatment is for *medical* condition or
    - Prudent layperson would believe that person needs exam or treatment for *medical* condition
  - Patient in other hospital department or on campus if
    - Request for exam or treatment is for *emergency* condition or
    - Prudent layperson would believe that person needs exam or treatment for *emergency* condition

# Comes to the hospital

- ▶ Patient comes to the office of Dr. Jones located within 50 yards of the hospital building for a annual visit. While at the appointment, patient starts complaining of chest pains. Dr. Jones is an independent physician who owns his practice and is not employed by or under contract with the hospital.
- ▶ Based on EMTALA is the hospital obligated to treat this patient?

# Hospital Property Where EMTALA Applies

- ▶ The main hospital building(s)
  - Including those within 250 yards of the main building(s)
- ▶ Driveways, parking lots, sidewalks

# Emergency Medical Condition

- ▶ A condition with acute symptoms (including pain, psychiatric condition, substance abuse, etc.) that the absence of immediate attention could reasonably result in:
  - Serious jeopardy to health of individual or unborn child
  - Impairment of bodily functions
  - Dysfunction of any bodily organ or part

# Off-Campus Sites That Are Not Dedicated EDs

- ▶ Risk management tips:
  - Ensure that policies are in place at off-campus nonemergency facilities for dealing with individuals who seek emergency care.
  - Note that such policies and procedures are needed to comply with Medicare Conditions of Participation.

# EMTALA and Ambulance

- ▶ A hospital's EMTALA obligation begins when the patient arrives via ambulance on hospital property.
- ▶ If ED staff are unable to immediately attend to the patient because they are dealing with multiple trauma cases, ask the EMS provider to stay with the patient.
- ▶ Even if unable to immediately complete a medical screening exam, assess the individual's condition upon arrival to ensure the patient is appropriately prioritized.

# Courts Address EMTALA and Ambulances

- ▶ Court of appeals decisions from the first and ninth circuits **find EMTALA applies when a patient is in route to the hospital via ambulance and contact is made with the hospital**, whether or not the ambulance is owned by the hospital.
- ▶ Affects hospitals in the first circuit—which covers Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico—and the ninth circuit—which covers Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and **Washington**.

# Medical Screening Exam

- ▶ Used to determine whether there is an emergency medical condition; triage is not screening
- ▶ Performed by physician or hospital board approved non-physicians
- ▶ Conducted without delay (i.e., patient registration may need to wait until screening is conducted)
- ▶ Based on the capacity of the hospital—resources and staff routinely available to inpatients with emergencies



# Medical Screening Exam (*cont.*)

- ▶ Consultation with patient's private physician must not delay screening or treatment for emergency medical condition.
- ▶ If emergency condition exists, perform and document continuous monitoring until patient is stable or transferred.
- ▶ Off-campus departments must have policies/procedures for appraisal of emergencies.

# Medical Screening Exam—Tips

- ▶ Screen first; ask insurance questions later to avoid delay.
- ▶ Screen minors first; get parental consent later if an emergency medical condition does not exist.
- ▶ Document facts and circumstances concerning individuals who leave without being seen or who leave against medical advice.
- ▶ Neither staff nor signage should discourage anyone from being screened.

# Medical Screening Exam—Tips (*cont.*)

- ▶ Not all screenings need be equally extensive; they should be tailored to the individual's presenting complaints or symptoms.
- ▶ A screening exam can range from obtaining a brief history and performing a physical exam to obtaining ancillary tests such as lumbar punctures and lab or diagnostic imaging studies.
- ▶ Medical screenings should be applied consistently to all individuals with similar medical conditions.

# Who Conducts the Medical Screening Exam?

- ▶ Medical screening exams are to be performed by staff who are designated as qualified by hospital bylaws, rules, and regulations and who are acting within the scope of state licensure.

# Stabilization

- ▶ To stabilize means:
  - No material deterioration of the emergency medical condition is likely, within a reasonable degree of medical probability, to result from or occur during the transfer
  - For woman in labor, child and placenta are delivered
  - Psychiatric patients are protected and prevented from injuring or harming self/others
  - Actions are within the capabilities and capacity of the staff and the facilities generally available

# Stabilization (*cont.*)

- ▶ Capability includes coverage available through on-call list.
- ▶ Capacity includes whatever a hospital customarily does to accommodate patients in excess of occupancy limits.

# EMTALA Transfer Requirements

- ▶ A transfer is moving a patient outside a hospital's facilities, and is appropriate:
  - When a hospital has exhausted all its capabilities in attempting to resolve the emergency medical condition
  - When a hospital is operating beyond capacity, and patient needs immediate stabilizing treatment
- ▶ Transfer of unstable patient requires:
  - Transfer is appropriate
    - Written, informed request; or
    - Physician certification that benefits outweigh risks; or
    - Qualified medical person certification, with physician countersignature

# Transferring Hospital's Responsibilities

## ▶ Appropriate transfer

- Ensure treatment within transferring hospital's capacity that minimizes risks to the individual's health
- If not capable of handling high-risk deliveries, may have transfer agreements with facilities capable of handling high-risk deliveries and high-risk infants
- Receiving facility has agreed and has space and personnel
- Effected through qualified personnel, transportation, and equipment
- All available medical records relating to emergency medical condition are sent with patient and other records (e.g., test results) are sent with patient or as soon as practicable

## ▶ Written consent or certification

- Provide name/address of on-call physician if refused or failed to appear
- Document services performed before transfer



# Transfer Responsibilities for Receiving Hospitals

## ▶ Receiving hospitals

- Hospital with specialized capabilities and capacity to treat may not refuse a transferred patient who requires such specialized capabilities.
  - This obligation may disappear if the patient is admitted to our hospital.
- EMTALA obligations are triggered when individual with emergency medical condition is transferred.
  - Need not accept if the transferring hospital has such specialized capabilities
  - Need not accept transfers from hospitals located outside the boundaries of the United States
- Hospital must report, within 72 hours, if it has a reason to believe an improper transfer was made.
  - Failure to report may trigger Medicare termination notice.

# Refusal to Consent to Examination, Treatment, or Transfer

- ▶ Hospital must offer further examination, treatment
- ▶ Inform of risks/benefits
- ▶ Document description of exam/treatment/transfer offered
- ▶ Document informed refusal in medical record, including reason(s) for refusal
- ▶ Take reasonable steps to obtain written refusal that includes disclosure of risks/benefits
- ▶ Document facts and circumstances of refusal to sign

# Refusal to Consent to Examination, Treatment, or Transfer (*cont.*)

- ▶ Compliance & Risk management tip:
  - An individual (Surrogate) may refuse an examination, treatment, or transfer on behalf of a patient only if the patient is incapable of making an informed choice.
  - Behavioral patients may lack competence to consent or refuse if involuntarily held.

# On-Call Physician List

- ▶ Individual physician names must appear on list
- ▶ Maintain in accordance with the resources available at the hospital; on-call physician coverage unnecessary if service not routinely offered by hospital
- ▶ Consider number of staff physicians and other demands made on them, frequency that patients need services of on-call physicians, and what provisions are made for unavailability of on-call specialists
- ▶ Policies and procedures for simultaneous call, elective surgery, backup call, and expected response time
- ▶ Hospital may provide exemption from on-call duties (e.g., senior physicians)

# Availability of On-Call Physicians

- ▶ ED physician determines whether on-call physician must come to ED.
- ▶ If on-call physician refuses or fails to arrive in a timely manner at ED, both physician and hospital may violate EMTALA.
- ▶ On-call physician may direct non-physician practitioner to go to ED, in accordance with bylaws, hospital rules and regulations, and state scope-of-practice laws.
- ▶ If the treating physician disagrees with the on-call physician's decision to send a representative and requests the on-call physician to appear, the on-call physician is obligated under EMTALA to appear in person.

# When EMTALA Obligations End

- ▶ Determination, after Medical Screening Exam, no Emergency Medical Condition exists
- ▶ Patient is stabilized
- ▶ Patient is admitted
- ▶ Patient is appropriately Transferred

# Screening Individuals Brought to the ED by Police

- ▶ Presents to ED solely as part of evidence gathering for criminal cases (e.g., blood alcohol, sexual assault)
  - Hospital is **not** obligated to provide medical screening exam, **but** if individual was involved in motor vehicle accident or otherwise may have sustained injury, a medical screening exam is **warranted** to determine if an emergency medical condition exists (prudent layperson standard).
- ▶ Presents to ED for clearance for incarceration
  - Hospital has obligation to provide medical screening exam.

# EMTALA Whistleblower Protections

- ▶ Hospital must not penalize:
  - Physicians or qualified medical personnel who refuse to authorize transfer of unstable patient
  - Employees who report EMTALA violations



# EMTALA Violations

## ▶ Possible violations

- Lack of EMTALA bylaws, policies, procedures
- For receiving hospitals, no report of suspected violations by transferring facilities
- Sign not posted or noncompliant signage
- Inadequate record retention—transfer records must be retained for 5 years
- No list of on-call physicians
- No central log of each “individual who comes to the hospital for emergency services”
- Lack of appropriate medical screening

# EMTALA Violations (*cont.*)

- Failure of on-call physician to respond or respond in timely manner
- Lack of stabilizing treatment
- Examination or treatment delayed to inquire about payment
- Inappropriate transfer
- No whistleblower protections
- As receiving hospital, failure to meet responsibilities
- Admission solely to avoid EMTALA obligations

# Top 10 EMTALA Rules

1. Log in every individual who “presents,” and document complaint/diagnosis and disposition.
2. Triage patients per protocol.
3. Provide medical screening exam in nondiscriminatory manner by physician or authorized provider, and obtain and document vital signs during stay and at time of discharge or transfer.

# Top 10 EMTALA Rules *(cont.)*

4. Do not delay or discourage screening to discuss payment.
5. Document acceptance and name/title of accepting individual from receiving hospital on transfer forms, and obtain patient's written consent or refusal.
6. Provide medically appropriate transport, personnel, and equipment. Personal vehicles are seldom appropriate.
7. Verify benefits outweigh risks of transfer.

# Top 10 EMTALA Rules (*cont.*)

8. When transferring, provide medical records, test results, reports, and consultation records with patient, and document on transfer form.
9. Document name of on-call physician who fails to respond or respond in timely manner.
10. Report violations by other facilities.

# Questions?

