



# The Emergency Medical Treatment and Labor Act (EMTALA)



*Presentation to the  
National Association  
of State Mental  
Health Program  
Directors*

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# Disclaimer

*The information provided in this presentation is only intended to be general summary information. It is not intended to take the place of statute, regulations, or official CMS policy.*

# Presentation Objectives

This presentation will provide a brief overview of EMTALA requirements for psychiatric hospitals

At the end of the presentation the participants will be able to:

- Identify EMTALA requirements for psychiatric hospitals
- Understand the basics of the EMTALA survey process

# Basic Premise

EMTALA requires Medicare-participating psychiatric hospitals to provide:

1. Medical screening examinations to any individual who presents to the “dedicated emergency department” (regardless of insurance or ability to pay),
2. Stabilizing treatment for emergency medical conditions, and
3. Appropriate transfers to/from hospitals for stabilizing treatment

# Impact of Law

EMTALA requirements apply to Medicare-participating psychiatric hospitals:

- With dedicated emergency departments (ED):
  - Licensed as ED
  - Held out to the public as providing ED services
  - **1/3 of visits in prior year provided treatment for emergency medical conditions on an urgent basis** (e.g. psychiatric hospital intake or assessment areas)
- Without EDs but with specialized services and capabilities

# Accrediting Organizations (AO)

- Psychiatric hospitals may be deemed for participation in Medicare by an AO with an approved program
  - Majority of psychiatric hospitals are deemed
  - The Joint Commission has the only approved program
- AOs assess compliance with the hospital Conditions of Participation (CoP)
- AOs have no authority over EMTALA
  - Will refer concerns to the CMS Regional Office (RO) for possible investigation by the State Survey Agency

# EMTALA Requirements

Policies and procedures which address anti-dumping provisions Reporting inappropriate transfers	Medical screening examinations
Reporting inappropriate transfers	Stabilizing treatment
EMTALA signage	Delays in examination or treatment
Transfer records	Appropriate transfers
Physician on-call list	Whistleblower protections
ED logs	Recipient hospital responsibilities

# Medical Screening Examinations 1

The hospital must provide a medical screening examination (MSE) to any individual who “comes to the ED” for care:

1. Presents to the ED (may include psych intake-assessment areas)
2. Is outside the ED but on hospital property
3. Is not on hospital property but in a hospital-owned and operated ambulance
4. Is in a non-hospital-owned ambulance that has arrived on campus



# Medical Screening Examinations 2

- Exam must be performed by a qualified medical professional:
  - Determined qualified by bylaws, rules and regulations
    - *Hospital policy can't trump State law*
  - Meets personnel requirements at §482.55
  - Rare occasions when RN can perform MSEs
    - *Must be in State scope of practice first*
- Purpose of MSE is to determine if an emergency medical condition (EMC) exists

# Medical Screening Examinations 3

The MSE must be appropriate to presenting signs and symptoms:

- May be simple or complex
- Utilizes the capabilities of the hospital
- Similar to the MSE provided to any other individual who presents with similar symptoms

# Medical Screening Examinations 4

Hospitals may follow normal registration procedures as long as the procedures don't delay the MSE

- Gather demographic data, emergency contact, etc.
- Ask for insurance information, if applicable

However, hospitals ***must not*** ask for payment, co-pays or deductibles, or seek insurance authorization prior to completing the MSE and providing stabilizing treatment for any EMC.

***These actions place the hospital at risk of violating EMTALA.***

# Medical Screening Examinations 5

- If the MSE determines an EMC exists, the hospital must provide stabilizing treatment or arrange for an appropriate transfer.
- If the MSE determines there is no EMC, EMTALA no longer applies.



# Stabilizing Treatment 1

The hospital is required to stabilize any emergency medical condition (EMC):

- Within the capabilities and capacity of the hospital, including inpatient admission
- Treating individuals with similar medical conditions consistently
- Utilizing the physician on-call list, as needed
  - ED practitioner determines if on-call physician has to present in person

# Stabilizing Treatment 2

*To stabilize* means, with respect to an “emergency medical condition”..., to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility or that, ...the woman has delivered the child and the placenta.

- *Underlying medical conditions may persist*
- *“Transfer of the individual from a facility...” also includes discharge home*

# Stabilizing Treatment 3

- If unable to stabilize the EMC, then appropriately transfer
- Provide ongoing examination and treatment within hospital capabilities until the transfer occurs, even if you don't have the specialized services needed
  - Including if there are delays in transfer until placement is found (e.g. psych patients)



# Stabilizing Treatment 4

- “*Clinically stable*” does not necessarily mean the EMC is stabilized, per EMTALA
  - Patient may be “clinically stable” but the EMC continues to exist
- “*Stable for transfer*” does not necessary mean the EMC has been stabilized or that EMTALA no longer applies
  - In fact, EMTALA **only** applies if the EMC has **not** been stabilized



# Appropriate Transfers 1

The hospital cannot transfer the patient with an unstabilized EMC unless:

- The patient requests a transfer in writing
  - You must inform the patient of the risks of transfer
- OR*
- The physician certifies in writing that the medical benefits of transfer outweigh the risks
- A non-physician practitioner consults with an MD who agrees with the transfer

# Appropriate Transfers 2

Additionally:

1. The sending hospital must provide care within its capabilities prior to transfer
2. The recipient hospital agrees to the transfer and has the capabilities and capacity to treat the EMC



# Appropriate Transfers 3

And...

3. The sending hospital sends all records at the time of transfer or when available, if pending
4. Qualified personnel and equipment are used for transportation, as determined by the sending hospital



# Appropriate Transfers 4

- If EMC stabilized, EMTALA no longer applies
  - May need to transfer patient for additional care but EMTALA appropriate transfer requirements don't apply
- Remember stabilized **vs.** clinically stable **vs.** stable for transfer
  - Important to determine if EMC is stabilized

***EMTALA only continues to apply with unstabilized EMC***

# Recipient Hospital Responsibilities 1

Medicare-participating hospitals with specialized capabilities or facilities **must** accept transfers of patients with unstabilized EMCs:

- If they have the capacity to treat the patient
- Regardless of whether or not they have an ED

# Recipient Hospital Responsibilities 2

- Recipient hospitals are not required, per EMTALA, to accept transfers of inpatients
  - EMTALA no longer applies if the patient was admitted in good faith to stabilize the emergency medical condition
- Observation patients are not inpatients, even if placed in an inpatient unit while awaiting transfer
  - If patients have unstabilized EMCs, EMTALA continues to apply

# Recipient Hospital Responsibilities 3

- Recipient hospitals **cannot** delay or condition the acceptance of transfers in order to get insurance authorization or approval
  - This includes psychiatric hospitals
- Recipient hospitals cannot dictate or require sending hospitals to use their transportation service or equipment
  - Sending hospital (with the patient) makes the determination

# Reporting Inappropriate Transfers

- Recipient hospitals are required to report inappropriate transfers
- Reporting should occur within 72 hours
  - There may be extenuating circumstances causing a delay
  - 72 hours addressed in preamble and guidance – not in regulations
- No requirement for sending hospitals to report refusals to accept
  - But should report if suspicious



# EMTALA Enforcement 1

- Complaint-driven process
  - No routine EMTALA surveys
  - Complaints may be generated on non-EMTALA surveys as well as from other people/organizations/news reports, etc.
  - Surveys are always unannounced
- Investigations authorized by the CMS RO
  - Regardless of who receives the complaint
- All EMTALA requirements are assessed
  - Not just the focus of the complaint

# EMTALA Enforcement 2

- RO makes compliance determination based on surveyor input and Quality Improvement Organization (QIO) expert physician review
  - Must be sent to the QIO if medical/surgical/psychiatric care is involved
- Only current non-compliance is cited
- Past non-compliance may be forwarded to HHS Office of Inspector General for review

If you think you may have violated EMTALA...  
***Report it to your CMS RO!***

# EMTALA Enforcement 3

- Non-compliance may lead to termination of the Medicare provider agreement and/or imposition of civil monetary penalties (CMP)
  - HHS Office of Inspector General imposes CMPs
- EMTALA Immediate Jeopardy (IJ) citations may impact hospital Value-Based Purchasing program participation



# Questions



# In closing...

The objectives for this presentation were to:

- Identify EMTALA requirements for psychiatric hospitals
- Understand survey process specific to EMTALA

# Contact Information

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# EMTALA Tips

## What can you do be in compliance with EMTALA?

Train all staff – hospital and contracted staff – volunteers too

Provide examinations, treatment, and arrange appropriate transfers

Monitor with QAPI

Maintain and follow on-call policies

Don't ask for money/co-pays before exam-treatment underway

Obtain consent from individuals who want to leave

Accept transfers if you have the capability and capacity

Report EMTALA violations of sending/receiving hospitals and MDs

Maintain logs (arrivals and transfers) and on-call schedules

Self-report to the CMS RO if concerned about potential violation(s)

Post EMTALA signs

Protect whistleblowers

# Statute and Regulations

## EMTALA Statute in the Social Security Act:

- Section 1866 – Agreements with Providers of Services; Enrollment Processes
- Section 1867 – Examination and Treatment for Emergency Medical Conditions and Women in Labor

## EMTALA Regulations:

- 42 CFR 489.24
- 42 CFR 489.20 (related requirements)



# EMTALA Resources

Regulations and Interpretive Guidelines specific to EMTALA can be found in the:

## **CMS State Operations Manual Appendix V**

[https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_v\\_emerg.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_v_emerg.pdf)

**EMTALA Basic** training (as well as all other CMS surveyor trainings) available publicly:

<https://surveyortraining.cms.hhs.gov/>