EMTALA: Getting Back to the Basics

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Elizabeth (Lisa) Thomas, Esq.
Dan Body, Esq.
Ann M. Pfeiffer, RN, MSN

Getting Back to the Basics

- A Brief Background and History
- Obligations Beyond Paperwork
  - Posting of Signs
  - Medical records
  - Central Log
- On-Call Requirements
  - Responsibilities

EMTALA: Getting Back to the Basics

A Brief Background and History of EMTALA:

Discussion of the Intent and Context of the "Anti-Dumping" Statute

EMTALA: The Background

- Highly publicized incidents
- EDs failed to screen or transfer
- Financial inadequacy
- "Patient Dumping"
- Reports grew in 1980s:
  - Increase uninsured & underinsured
  - Cost containment

EMTALA: The History

- 1986
- "COBRA"
- Ensure public access to emergency services
- Regardless of ability to pay
- Medicare-participating hospitals

EMTALA: A Brief Overview

- Emergency Medical Treatment and Labor Act
- Hospitals with EDs
- §1866 and §1867 Social Security Act
- 42 CFR §489.24
- 42 CFR §489.20

EMTALA: A Brief Overview

- All individuals
- Not just Medicare beneficiaries
- Screen any individual who comes to the ED
- Prohibits refusing to examine or treat individuals with an emergency medical condition

Dedicated Emergency Department

- Dedicated Emergency Department (DED)
  - (1) Licensed by the state as an ED
  - (2) Held out to the public as providing treatment for EMCs
  - (3) One-third of the visits provided treatment for EMCs

EMTALA: Enforcement

- Complaint driven process
- Hospitals may be terminated
- CMPs may be imposed against:
  - Hospitals and/or physicians
- CMS evaluates all complaints
- Refers cases to the SA for investigation

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Obligations Beyond Paperwork:

Posting of Signs, Maintaining Medical Records and Central Log

EMTALA: Regulation Overview

- Data Tags are cited for noncompliance
- Tags are correlated to specific regulations
- A400- A411 Tags are the EMTALA responsibilities

A402: Posting of Signs

42 CFR 489.20(q)

- Post conspicuously
- Rights of individuals with respect to:
  - Examination
  - Treatment for EMCs
  - Women in labor
- Participates in the Medicaid program

A402: Interpretive Guidelines

- Clear and simple terms
- Languages of population served
- Clearly readable
- A distance of at least 20 feet

A403: Medical Records

42 §489.20(r)

- Maintain record for 5 years
- Transferring and receiving hospitals
- Original or legally reproduced form
  - Hard copy, microfilm, microfiche, optical disks, computer disks, or computer memory

A405: Central Log

42 §489.20(r)(3)

- Individuals who present seeking assistance:
  - Whether he or she refused treatment
  - Was refused treatment
  - Whether he or she was transferred
  - Admitted and treated
  - Stabilized and transferred
  - Discharged

A405: Interpretative Guidelines

- Form that meets the needs of the hospital
- Patient logs from other areas that may be considered DEDs
- May keep in an electronic format
- No gaps in entries or missing info

A408: Delay in Examination

42 §489.24(d)(4) and (5)

- No delay in exam or treatment to inquire:
  - Method of payment
  - Insurance status
  - Authorization from insurance company
- Reasonable registration processes
- Transferring and receiving hospitals

"Little Tags" Cause Big Problems

- Physician on-call lists for the past 6 months
- DED logs for the past 6-12 months
  - Gaps or non-sequential entries
  - Refusals of examination, treatment or transfer
  - Leaving AMA or left without being seen
  - Returning within 48 hours

EMTALA: Non-Immediate Jeopardy

- These Tags could follow a 90 day track
- Would not in themselves involve referral to OIG for CMPs
- "Red flag" to surveyors
- Provide a road map to a vulnerability

EMTALA: Case Examples

- "Circular filing" of those patients that did not get past registration
- LWBS or AMA
- Transfer forms
- Return within 48 hours

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On-Call Requirements:

No Easy Answers

Responsibilities and CMS Guidance

A404: On Call

42 CFR §489.24(j)

42 CFR 489.20(r)(2)

- List of physicians who are on call to provide necessary stabilizing treatment
- ED is prospectively aware

A404: Interpretative Guidelines

- No requirements on frequency
- No ratio for days of call: staff physicians
- "***Manner that best meets the needs of the patients who are receiving services under EMTALA according to resources available***"
- Decision left to hospital and physicians

A404: Interpretative Guidelines

- Individual MDs names are to be identified
- No physician is required to be on-call at all times
- ED capability includes on-call services

A404: Interpretative Guidelines

- Treating MD determines whether on-call MD must physically assess the patient
- MD must arrive within the response time
- Stated in minutes
- Non-physician practitioner may respond
- Selective on call is prohibited

A404: Interpretative Guidelines

- Referral of Emergency Cases to Physician Office:
  - Part of a hospital-owned facility
  - On the hospital campus
  - All persons are moved in such circumstances
  - Bona fide medical reason
  - Appropriate medical personnel

A404: On-Call

- P&P for situations:
  - Specialty is not available
  - On call cannot or does not respond
- Provide emergency services to meet the needs of patients with EMCs if:
  - On-call physicians schedule elective surgery
  - Physicians have simultaneous on-call duties

EMTALA: Questions and Concerns

On morning topics:

- Background
- Obligations Beyond Paperwork
- On-Call Requirements

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April 25, 2007 Afternoon

Elizabeth (Lisa) Thomas, Esq.
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EMTALA: The Basics

- Medical Screening Examination
  - Requirements and Interpretative Guidelines
- Stabilizing Treatment
  - "Stable?"
  - Capability and Capacity
- EMTALA Transfer
  - Written Certification and four criteria
- Recipient Hospital Responsibility
  - When you must accept

EMTALA: Getting Back to the Basics

Medical Screening Examination:

Definition, Requirements, Interpretative Guidelines

A406: Appropriate Medical Screening Examination (MSE)

42 §489.24(a)

- Determine whether or not an emergency medical condition (EMC) exists
- Within the capability of the hospital's ED
- Ancillary services routinely available
- Beyond initial triaging

When is EMTALA Triggered?

- Request made for examination or treatment:
  - By the individual
  - On the individual's behalf
  - Prudent layperson observer
- DED: a medical condition
- Elsewhere: an *emergency* medical condition

A406: Appropriate Medical Screening Examination (MSE)

- Qualified Medical Person (QMP)
  - Governing body approval
  - Hospital by-laws
  - Rules and regulations
- Informal appointments are not acceptable
- Determination of false labor

EMC is defined as:

- EMC defined as a medical condition
- Acute symptoms of sufficient severity
  - Severe pain
  - Psychiatric disturbances
  - Symptoms of substance abuse

EMC definition continued:

- Absence of immediate attention could result in:
  - Health in serious jeopardy
  - Serious impairment
  - Serious dysfunction
- Women having contractions:
  - Inadequate time to transfer before delivery
  - Transfer may pose a threat

A406: Interpretative Guidelines

- Registered outpatient yet to begin care
- Movement to another department:
  - On-campus
  - All persons with the same medical condition are moved in such circumstances
  - Bona fide medical reason
  - Appropriate personnel accompany individual

A406: Interpretative Guidelines

- Not applicable to off-campus and non-DED
- Depends on presenting symptoms
- Range from simple to complex process
- Ongoing process
- Like MSE for like symptoms
- Not outcome based

A406: Interpretative Guidelines

- Do not delay MSE of minor for consent
- Hospital owned and operated ambulance is "hospital property"
- Helipad
- Community or State Plans do not supersede EMTALA obligations

A406: Interpretative Guidelines

- CMS guidelines in national emergency
- Hospitals responsible for providing a MSE
- Transfer or referral in accordance with community plan
- Would not result in sanctions

Documentation of MSE

- Medical records should contain:
  - History and physical examination
  - Medically indicated screenings
  - Laboratory and other tests results
  - Mental status evaluation
  - Impressions
  - Diagnoses

Documentation of MSE

- For pregnant women:
  - Fetal heart tones
  - Uterine contractions
  - Fetal position and station
  - Cervical dilation
  - Status of membranes

Documentation of MSE

- For individuals with psychiatric symptoms:
  - Suicide or homicide attempt
  - Suicide or homicide risk
  - Orientation
  - Assaultive behavior that indicates danger to self or others

"Appropriate"

- Does not mean "correct"
- Not required to correctly diagnose
- Negligence is not necessarily a violation
- Means suitable for symptoms presented
- Conducted in a non-disparate fashion

DED for Non-emergency Services

42 §489.24(c)

- Request is clear it is not an emergency
- Screening same
- Determine there is not an EMC
- Pharmaceutical services
- Preventative care services
- Gathering of evidence for criminal law

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Stabilizing Treatment:

What Does "Stable" Really Mean?

Capability and Capacity Issues

A407: Stabilizing Treatment

42 §489.24(d)

- If an EMC exists:
  - Provide further medical examination
  - Any necessary stabilizing treatment
- Within the capabilities of the staff
- Facilities available at the hospital
- Regardless if hospital will be paid

Stabilization is defined as:

- Medical treatment of the condition necessary to assure:
  - Within reasonable medical probability
  - No material deterioration of condition is likely to result from or occur during the transfer or discharge
  - Woman has delivered child and placenta

Documentation of Stabilization

- Does not apply to inpatients
- Medical record reflects:
  - Medically indicated treatment necessary
  - Medications
  - Surgeries
  - Services
  - Effect of treatment on the EMC
  - Labor and condition of unborn child

Capability is defined as:

- Physical space
- Equipment
- Supplies
- Specialized services
  - Surgery, psychiatry, obstetrics, intensive care, pediatrics, trauma care
- Level of care personnel can provide
- On-call roster

Capacity is defined as:

- Census: occupancy of a specialized unit
- Number of staff on duty
- Equipment on premises
- Whatever customarily does to accommodate patients in excess of occupancy limits

Refusal to consent to treatment

- Offer further examination and treatment
- Written informed refusal indicates:
  - Risks of refusing
  - Benefits of consenting
- Record contains description of what was refused
- Take all reasonable steps to secure

EMTALA Obligation Ends

- (1) No EMC
- (2) EMC exists:
  - Admitted
  - Appropriately transferred

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EMTALA Transfer:

When is it Appropriate?

Written Certification and Four Pre-requisites

A409: Appropriate Transfer

42 §489.24(e)

- May not transfer with an EMC unless:
  - (1) appropriate transfer
  - (2) request for transfer
    - Must be in writing
    - Indicate the reasons for request
    - Aware of the hospital's obligation, as well as risks and benefits of the transfer

Transfer is defined as:

- Movement of an individual outside a hospital's facilities
- Includes discharge
- At the direction of employee of the hospital
- Does not include individuals:
  - Declared dead
  - Who leave voluntarily

Physician Certification

- Information available at time of transfer
- Medical benefits expected of treatment
- Outweigh increased risks from being transferred
- Contains reason (s) for transfer
- Summary of the risks and benefits

Physician Certification

- When a physician is not physically present in ED:
  - QMP signs certification
  - In consultation with physician who agrees with certification
  - Subsequently countersigns certification

A409: Four Requirements

(1) Transferring hospital provides treatment within its capacity
(2) Receiving hospital has available space and personnel and has agreed to accept
(3) Medical records available at time of transfer sent to receiving hospital and includes the name and address of any on-call MD
(4) Transfer conducted through qualified personnel and transportation equipment

A409: First Requirement

- The hospital provides medical treatment
- Within its capacity
- Minimizes risks:
  - To the individual's health
  - In the case of a woman in labor, the health of the unborn child

A409: Second Requirement

- Recipient hospital:
  - Available space
  - Qualified personnel for treatment of the individual
  - Agreed to accept transfer of the individual
  - Agreed to provide appropriate medical treatment

A409: Third Requirement

- Send all records available at time
- Records related to the EMC:
  - History
  - Observations of signs or symptoms
  - Treatment provided
  - Preliminary diagnosis
  - Results (telephone reports) of tests and diagnostic studies
  - Informed written consent or certification
- Any on-call physician who refused or failed to appear

A409: Fourth Requirement

- Transfer is effected through:
- Qualified personnel
- Transportation equipment
  - Use of necessary and medically appropriate life support measures

Women in Labor

- Transferred only if she requests the transfer
- Physician signs certification that benefits outweigh the risks:
  - If obstetrical services are not provided
  - Transfer agreements for handling high-risk deliveries or high-risk infants
- Screening, treatment and transfer requirements apply

A409: Interpretative Guidelines

- Moved for diagnostics at another facility, appropriate transfer requirements apply
- Implementing an appropriate transfer back is not necessary
- Verified by surveyors through transferring hospital's information at the receiving hospital and any EMS records

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Recipient Hospital Responsibilities:
When you must accept and when it is ok to refuse

A411: Recipient Hospital Responsibilities

42 §489.24(f)

- Participating hospital that has specialized capabilities including, but not limited to:
  - burn units, shock-trauma units, neonatal intensive care units or regional referral centers
- Must accept from a U.S. referring hospital
- Appropriate transfer requiring capabilities
- If has the capacity to treat the individual

A411: Interpretative Guidelines

- Responsible if individual presents at the receiving hospital
- Lateral transfers are not sanctioned
- Individual would likely benefit if the transferring hospital lacks capacity

EMTALA: Case Study #8

Recommendations

- P&P for emergency medical services are:
  - Established
  - Evaluated
  - Updated on an ongoing basis.
- Procedures assure integration with other hospital services, e.g.:
  - Laboratory
  - Radiology
  - ICU and OR

Internal Review

- Medical records from all facilities involved
  - Transferring
  - Receiving
- EMS reports
- Records of delivery
- Records of neonate
- Interviews

Training

- Regularly scheduled
- Different modalities
- Applicability to real life practice
- Case studies

Statistics for Region IV: Southeast

- **FY 2004**

  342 authorized, 71 in violation

- **FY 2005**

  300 authorized, 79 in violation

- **FY 2006**

  273 authorized, > 70 in violation

  some pre-decisional

EMTALA: Question and Concerns

Thank you.

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