Emergency Medical Treatment and Active Labor Act (EMTALA)

State Operations Manual - Appendix V

CSR for the Carolinas

November 12, 2014
Objectives

The participant will be able to:

- Define key terminology
- Identify basic EMTALA obligations and regulations
- Identify surveyor procedures and activities
- Recognize EMTALA violations
Introduction to EMTALA

- Began in 1986 by Congress as part of COBRA
- Prevents hospitals from “dumping” patients
- Requires a medical screening examination to anyone who comes to the hospital seeking emergency care
- Requires stabilizing treatment or appropriate transfer to any patient with an emergency medical condition
Hospitals with DED are subject to EMTALA: Any hospital department or facility

- Licensed as an emergency department (ED)
- Held out to public as providing treatment for emergencies, or
- Where one-third of visits to the department in the previous calendar year actually provided treatment for EMC on urgent basis

- SOM, Appendix V: Part 1: Investigative Procedures
Hospitals and CAHs with dedicated emergency departments are subject to EMTALA requirements.

- Applies to all individuals (e.g., Medicare, private pay, private insurance, indigent) seeking care.
  - Does not apply after patient is admitted.

- SOM, Appendix V: Part 1: Investigative Procedures
Hospital property defined:

- Entire main hospital campus
  - Parking lot
  - Sidewalk
  - Driveway
  - All hospital departments
- Any building owned by the hospital within 250 yards of the main hospital campus
  - A-2406/C-2406
489.24(a) & 489.24(c) Ambulances

- EMTALA obligation applies:
  - Hospital owned and operated ambulance *on or off* hospital campus
  - Non-hospital owned ambulance *on* hospital campus

- EMTALA obligation does NOT apply
  - Non-hospital owned ambulance not *on* hospital campus
    - A-2406/C-2406
EMTALA Investigation

EMTALA investigation

- Complaint driven
- Unannounced investigations
- To be completed within 5 working days of CMS authorization
- Specific allegations investigated
- Possible look back 6 months

- SOM, Appendix V:
  Part 1: Investigative Procedures
EMTALA Investigation (cont.)

- Examination of policies and procedures
- Suspected discrimination
  - e.g., diagnosis, financial status, race, color, national origin, handicap
  - Referred to Office of Civil Rights
- Findings not shared during investigation (even Immediate Jeopardy)
- CMS – final decision-maker
- Hospital can comment/provide evidence later

  - SOM, Appendix V:
    Part 1: Investigative Procedures
Potential Consequences of EMTALA Violations

Potential consequences of EMTALA violations:

- Termination of hospital Medicare provider agreement
- Termination of physician from Medicare/Medicaid program
- Civil monetary penalties

- SOM, Appendix V: Part 1: Investigative Procedures
Potential civil money penalties:

- Penalties against hospitals
- Penalties against individual physicians
- Up to 50 K imposed by Office of the Inspector General (OIG)
- Professional medical review prior to fines
  - SOM, Appendix V:
    Part 1: Investigative Procedures
EMTALA
Basic Requirements

- Adopt and enforce policies and procedures
- Post signage
- Maintain transfer and other records
- Maintain a list of on-call physicians
- Maintain a central log
- Provide medical screening examination (MSE)
- Stabilize emergency medical condition (EMC)

-SOM, Appendix V
Post signs with **required information**, such as:

- Patient right to have a medical screening exam and stabilizing treatment for any emergency medical conditions and for labor
- Hospital participation, or not, in the Medicaid program

Post signs **conspicuously**

- Clear, easily understood language
- Signs large enough to be read from a distance
- Consistent with any State requirements

- A-2402/C-2402
Places to post signage:

- Places likely to be noticed by all individuals seeking emergency treatment, such as:
  - Entrance to emergency department
  - Admitting area
  - Waiting room
  - Treatment areas

- A-2402/C-2402
Inappropriate signs:

- Signs that could deter a patient from seeking emergency care
- Signs that could coerce a patient to leave the emergency department
- Examples
  - Payment is expected at time of ED visit.
  - This hospital participates in an opioid addiction monitoring program.
    - A-2402/C-2402
Transferring and receiving hospital must maintain:

- Medical records, including transferred records, for 5 years
- Longer than 5 years if State law requires - A-2403/C-2403
42 CFR 489.20(r)(2) & 42 CFR 489.24(j)
On Call Physician Roster

Must maintain list in ED of on-call physicians

- Privileged medical physicians
  - On staff or
  - Part of formal community call plan AND
  - Available to provide stabilizing treatment after medical screening exam
    - A-2404/C-2404
Written polices and procedures must address how emergency services will be provided when:

- Specialty physicians are not available
- On call physician does not respond
- Physician is permitted additional duties while on call, such as:
  - Scheduled elective surgery
  - Simultaneous call duties
  - Participation in formal community call plan

- A-2404/C-2404
Hospitals Participating in Community Call Plan must ensure policies include:

- A clear delineation of on-call responsibilities
- A description of participating geographic areas
- Signatures of representatives of each participating hospital
- EMS inclusion in call arrangements
- A statement of obligation to provide medical screening exam and stabilizing treatment
- An annual evaluation of call plan

- A-2404/C-2404
42 CFR 489.20(r)(3)
Central ED Log

- Log must include all individuals who present seeking help for potential EMC
  - To emergency department
  - To other areas subject to EMTALA (e.g. obstetric or psychiatric unit)
- Log must include patient names and disposition (e.g. admitted, transferred, discharged, treatment refused, LWBS, AMA,)
  - A-2405/C-2405
Delay in Examination or Treatment

Cannot *delay* a MSE or treatment:

- To request payment or insurance information
- To request pre-authorization
- To contact previous providers
  - May call to seek advice and get history as long as no delay in MSE or stabilizing treatment

Registration may occur:

- If it does *not* delay MSE *or*
- If it does *not* discourage individual from remaining
  - A-2408/C-2408
Requirements for medical screening exam (MSE):

- Completed by qualified personnel in accordance with medical staff bylaws
- Variable clinical assessment per patient needs
- No difference in MSE due to payment status
- MSE reflected in medical record documentation - A-2406/C-2406
Definition of emergency medical condition:

- A condition with acute symptoms that are severe, that could result in:
  - Serious health jeopardy
  - Impairment of bodily functions
  - Dysfunction of any bodily organ or part
- Pregnancy with contractions
  - Inadequate time for safe transfer
  - Transfer may effect health and safety of woman or unborn child
Patient leaves who was determined to have EMC:

Not considered “dumping” unless:

- Patient leaves based on hospital suggestion
- The hospital was operating beyond capacity and did not attempt to transfer patient for stabilizing treatment

- A-2406/C-2406
42 CFR 489.24(d)(3)&(4) Stabilizing Treatment

Must provide stabilizing treatment

- Within hospital capabilities & capacity
  - Physical space, equipment, supplies, and specialized services that the hospital provides
  - Personnel-training and scope of licenses, including on-call roster personnel
  - Customary provision of care when beyond occupancy limits

-A-2407/C-2407
Definition of stabilizing treatment

- No deterioration of the condition is likely…
  - Within reasonable medical probability
  - To result from or occur during the transfer of the individual from a facility
  - With respect to an EMC
- Infant and placenta were delivered -A-2407/C-2407
Stabilizing treatment

- Must be consistent for all individuals with similar symptoms
- Not affected by payer source, race, religion, etc.

Patient considered stabilized when EMC resolved

-A-2407/C-2407
EMTALA obligation ends when:

- Determination, after screening, no EMC exists
- Patient is stabilized
- Patient is admitted
  - (Now under Conditions of Participation)
- Patient is appropriately transferred
  - A-2407/C-2407
Transfer

Definition of transfer by EMTALA regulations:

- Movement of individual outside of hospital facilities at the direction of hospital staff or affiliate

Does not include movement outside the facility when:

- Patient died
- Patient left without hospital permission
- Patient moved from one department of hospital to another department or facility owned by hospital
  - A-2409/C-2409
Appropriate transfer from sending hospital:

- Benefits outweigh risks (certified by physician)
- Treatment provided to minimize risk of transfer
- Pertinent medical records sent
- Qualified personnel attend to patient
- Appropriate equipment available (e.g., life support measures)
- Consent obtained from receiving hospital

- A-2409/C-2409
Patient request or refusal of transfer

- When patient *refuses* a transfer
  - Written informed refusal including risks and benefits to transfer, and reason for refusal - A-2408/C-2408

- When patient *requests* a transfer
  - Written informed consent including risks and benefits to transfer, and reason for request - A-2409/C-2409
Receiving hospital must:

- Have available space
- Have qualified personnel
- Agree to accept transfer
- Report any suspected EMTALA violations

- A-2409/C-2409
42 CFR 489.24(f)
Recipient Hospital Responsibilities

Receiving hospital \textit{may not refuse} appropriate transfer

- When specialized capabilities are available
- Within capacity of receiving hospital
- Regardless of dedicated ED status
- Regardless of patient’s ability to pay or insurance status

Receiving hospital \textit{may refuse} a request to accept a patient already admitted to the initial hospital

-A-2411/C-2411
42 CFR 489.20(m)
Reporting Responsibilities

Must report potential violations within 72 hours

- Inappropriate transfers
  - Unstable condition
  - Did not agree to transfer
  - Did not receive appropriate medical records
  - Not conducted by qualified personnel
  - Inappropriate transportation
  - Insufficient life support measures
  - Receiving hospital had capability and capacity
    - A-2401/C-2401
42 CFR 489.24(e)(3)
Staff Protection

Staff are protected when they:

- Refuse to transfer a patient with an EMC that is not stabilized
- Report EMTALA violations

- A-2410/C-2410
Related Conditions of Participation (CoPs)

- § 482.55 Emergency Services
- § 482.22 Medical Staff Services
- § 482.12 Governing Body
- § 482.54 Outpatient Services
  - SOM, Appendix A
Investigative Procedures

What may surveyors request for review?

- ED logs, policies, and meeting minutes
- Consent forms
- Staffing schedules (as worked)
- Medical staff bylaws, meeting minutes, and staff roster

- SOM, Appendix V: Part 1: Investigative Procedures
What may surveyors request for review?

- Physician on-call list (6 months)
- Credentialing files
- QAPI plan and meeting minutes
- Ambulance trip reports (as applicable)
- In-service/training records
  - SOM, Appendix V: Part 1: Investigative Procedures
Clinical Record Review

Review 20-50 clinical records. Select from:

- Transfers
- Gaps, return cases or non-sequential entries
- Refused exam, treatment, or transfer
- Left against medical advice (AMA)
- Left without being seen (LWBS)
- Returned within 48 hours

- SOM, Appendix V: Part 1: Investigative Procedures
Summary

- Establish policies and procedures
- Post conspicuous signs
- Maintain transfer and other records
- Maintain list of on-call physicians
- Maintain complete, up-to-date ED log
- Provide MSE and stabilizing treatment of EMC
- Ensure appropriate transfers (sending)
- Accept appropriate transfers (receiving)
- Report potential violations
Questions?