



August 11, 2017

EMTALA and Behavioral Health

Introduction

AnMed Health in South Carolina was the largest Emergency Medical Treatment & Labor Act (EMTALA) civil monetary penalty case to date with AnMed agreeing to pay \$1.295 million to settle for alleged EMTALA violations. Based on the settlement, at issue was the facility's differentiation in handling emergency psychiatric patients depending on whether they were voluntarily or involuntarily committed for mental health treatment and whether they had money. For some patients days or weeks lapsed without proper evaluation or treatment to determine or stabilize their emergency medical conditions (EMC¹). The AnMed Health case brings to light that the basic tenets of EMTALA and a hospital's obligation for all patients, include behavioral health patients, still remains unclear. With fines for EMTALA violations having increased in December 2016 (for hospitals with more than 100 beds, fines increased from \$50,000 to \$103,139 per violation), violations can be very costly.

Executive Summary

According to the July 31 *Report on Medicare Compliance*, one out of every eight emergency department (ED) visits is for mental health or substance abuse disorders. In addition, state inpatient psychiatric hospital beds are 10% of what was available in the 1970s to meet today's patient need and demand. This has caused some to turn to the ED as a way to obtain behavioral health care. Determining how to apply EMTALA regulations regarding assessment, stabilization, discharge, or transfer is not always clear-cut for hospitals.

The insufficient number of inpatient psychiatric beds to meet growing demand, coupled with increased EMTALA enforcement fines, means hospitals must consider their approach to care for behavioral health emergencies. At the very least, hospitals should review their ED policies and procedures to ensure they specifically address EMTALA compliance for patients with behavioral health emergencies and educate staff on the basic elements of a medical screening examination (MSE), EMC, stabilization and recipient hospital obligations.

Background

In 1986, Congress enacted EMTALA to ensure public access to emergency services. Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a MSE when a request is made for examination or treatment for an EMC, regardless of an individual's ability to pay. An appropriate MSE should be provided within the capabilities of the hospital's ED, including ancillary services routinely available to the ED, to determine whether an EMC exists. Hospitals are then required to provide

¹ An EMC is "a condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health [or the health of an unborn child] in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of bodily organs. "Acute symptoms of sufficient severity" can include severe pain, psychiatric disturbances and/or symptoms of substance abuse."

stabilizing treatment for patients with EMCs. If a hospital is unable to stabilize a patient within its capability, or if the patient requests, an appropriate transfer should be implemented.

Obligations under EMTALA

As questions have recently arisen related to the MSE for mental health patients, stabilization and a hospital's recipient obligations, below are highlights of each area.

Medical Screening Exam. A MSE includes both a general and focused assessment based on the patient's chief complaint with the intent to determine the presence or absence of an EMC. Therefore, a MSE will vary based on the patient's symptoms and conditions but must be the same MSE that the hospital would perform on any individual coming to the hospital's ED with the same signs and symptoms. An MSE may require different levels of care ranging from a brief history and physical examination to a more complex process that may involve labs or diagnostic tests and procedures and should be viewed as an ongoing process and not an isolated event. *For mental health patients, the MSE typically has two steps: (1) an initial exam to rule out organic causes of mental disorder and (2) a psychiatric review.* Additionally, hospitals must also assess to determine that a medical EMC does not exist. This makes it important that physicians don't ignore the screening for a medical EMC and just perform one that addresses mental health. If an MSE is performed and does not reveal an EMC, the hospital has no further obligation under EMTALA. Likewise, a hospital's EMTALA obligation ends if the physician stabilizes the patient and all EMCs identified are addressed, the hospital admits the patient in good faith, or provides all treatment within their capabilities and makes an appropriate transfer.

Stabilization. The statute defines stabilization, with respect to an emergency medical condition, as either providing 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. For mental health patients, CMS has further defined stabilization to be when a psychiatric individual is protected and prevented from injuring or harming themselves or others. Communication within the ED of each member involved in the patient's care (from providers who assess the patient to nurses who may speak with family members) is key in deciding if a behavioral health patient is stable enough for transfer or discharge.

While some patient's cannot be stabilized for discharge they can be stabilized for transfer. There should be hospital policy around transfers of behavioral health patients including the vehicle in which the patient will be transported. Stabilizing behavioral Health patients specifically for transfer is provided for under EMTALA but the benefits of transfer have to outweigh the risks. Clear, thorough documentation for transfer can mitigate potential EMTALA violations. This includes: (1) providing medical treatment to minimize risks, (2) arranging for the receiving hospital to accept the transfer, (3) the physician certifying in writing that the transfer outweighs the risk, (4) ensuring the transfer is accomplished with qualified personnel, and (5) ensuring copies of the medical record are sent to the receiving facility.

Recipient Hospital Obligations. Hospitals, especially those with specialized capabilities, like psychiatric services, also have obligations as a recipient hospital. As part of recipient hospital obligations, a hospital must accept an appropriate transfer of a patient from a transferring hospital if the patient has an EMC and the EMC requires specialized capabilities or facilities (i.e. Psychiatry, Burn, Labor and Delivery) that the receiving hospital can provide and which cannot be provided by the transferring hospital.

If the receiving hospital has the specialized capabilities required by the patient and the capacity to treat the patient at the time of the request, the hospital may not refuse to accept the transfer from another hospital. However, EMTALA's recipient hospital obligation does not require that a hospital with specialized capabilities such as psychiatric services accept every psychiatric patient or that a hospital with a trauma center accept every trauma patient. If a transferring hospital has an individual with an EMC, and the individual does not require any treatment

beyond the capabilities or facilities available at the transferring hospital, the receiving hospital is under no EMTALA obligation to accept the transfer.

The responsible physician receiving the transfer request and physician certification from another hospital or facility should determine the availability of an appropriate level of care, bed, or specialized service prior to accepting a transfer. Such determination should be made consistent with hospital policies and procedures and in collaboration with the appropriate medical staff, medical executive, or designee.

Summary of Key Elements

- A MSE should not be confused with triage, which determines the order to be seen, not whether an emergency medical condition exists.
- Under EMTALA, a hospital has an obligation to determine if the individual who presents to the ED has an EMC. If after evaluation, it is determined that an EMC exists, the obligations of EMTALA continue, and the hospital must:
 - Treat the patient within the medical facilities capabilities to stabilize the patient's identified EMCs (which may include medical and psychiatric); or
 - If the patient cannot be stabilized within the hospital's capabilities, the hospital must appropriately transfer the patient.
- A hospital's EMTALA obligation ends when:
 - Physician conducts an MSE and does not identify an EMC.
 - Physician stabilizes the patient and all EMCs are identified and addressed.
 - Hospital admits the patient in good faith.
 - Hospital provides all treatment within its capabilities and makes an appropriate transfer.
 - Note: If a patient remains in the ED while awaiting transfer, hospitals must determine when to re-evaluate the patient to determine if they still remain stable for transfer (e.g. a patient who is initially determined as stable for transfer but waits hours or days in the ED must be re-evaluated and confirmation of stabilization performed again along with vital signs prior to transfer).

There may be standard of care issues or state law requirements that could be implicated by not admitting an individual when an EMC is stabilized or not identified, but there is not a duty under EMTALA to do so.

- A MSE:
 - Is not an isolated event but an ongoing process and may vary based on signs and symptoms
 - Must be done in accordance with policy and medical standards
 - Requires documentation in the medical record of the process, tests/assessment and outcomes
- Hospitals may also have recipient hospital obligations under EMTALA, and must accept an *appropriate* transfer of a patient from a transferring hospital if the patient has an EMC *and the EMC requires specialized capabilities or facilities that the receiving hospital can provide and which cannot be provided by the transferring hospital*. The receiving hospital must have the specialized *capabilities* required by the patient and the *capacity* to treat the patient at the time of the request.
- **Documentation for each step of the MSE, transfer decisions, and determining capabilities and capacity is key!**

Additional Information

CMS Emergency Medical Treatment & Labor Act Information and Regulation Site:

<https://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/>

This alert relates to general information and is intended for informational purposes. Individual facts and circumstances based on facility/hospital structure, policy and local laws vary. Please contact Diamond's Corporate Integrity Department for facility/hospital specific questions or additional information.