Reducing EMTALA Risks in Hospitals

Although hospitals participating in federal healthcare programs have policies and procedures in place to ensure compliance with the Emergency Medical Treatment and Active Labor Act (EMTALA), the Centers for Medicare & Medicaid Services (CMS) is still citing them for violations and charging significant penalties.[1]

EMTALA, which ensures public access to emergency services regardless of a patient's insurance coverage or ability to pay, was designed to protect patients from being "dumped" and/or refused treatment at hospitals participating in federal healthcare programs. It applies to all persons, including noncitizens, who seek care at a hospital emergency department (ED).[2]

Lack of compliance with EMTALA creates potentially catastrophic consequences for patients and hospitals. Consequences of noncompliance include federal monetary fines and exclusion from Medicare programs as well as reputational damage and possible liability exposure.[3]

Below are some strategies to help reduce incurring EMTALA violations in high-risk areas and increase compliance with the regulations. [4]

1

Perform audits on, and ensure periodic review of, the hospital's EMTALA-related policies and procedures to adequately address legal and regulatory requirements for any dedicated emergency department, including obstetrics/labor and delivery as well as any urgent care centers affiliated with the hospital receiving federal funding. Monitor all departments affected by EMTALA on an ongoing basis to stay current and adhere to changing rules in the hospital's policies.

2

Implement a robust provider education program. Address any identified shortfalls within a hospital system in this training program. Stress compliance and adherence to regulations and documentation. Ensure new ED staff, temporary staff, and all hospital employees understand EMTALA and what is required of them to comply.

3

Post signage in the ED in places likely to be seen by anyone entering as well as those who are waiting in an examination or treatment room. The signage (see page 22 of this CMS State Operations Manual for specific requirements) should indicate patient rights under EMTALA (applying plain language guidelines) with respect to examination and treatment of emergency medical conditions and women in labor as well as whether the hospital participates in federal programs. Signage must also be posted in additional languages where applicable.

4

Verify and ensure appropriate medical screening examinations (MSEs) are in place, comply with EMTALA, and are applied uniformly to all people presenting to the ED with similar symptoms. (CMS' Frequently Asked Questions for Hospital and Critical Access Hospitals regarding EMTALA provides more specifics about MSEs.) Ensure that the hospital's patient assessment process is consistent.

5

Ensure that only qualified medical professionals (QMPs) approved by the governing board conduct MSEs for every patient seeking emergency attention to determine whether an emergency medical condition exists. If it is determined that an emergency medical condition exists, the patient must be treated and stabilized as the hospital's capability permits.

6

Maintain an on-call roster listing the names of physicians who are available to come to the hospital to provide further examination and stabilizing treatment for patients with an emergency medical condition.

7

Develop a rigorous documentation process that includes documentation in a central log of all patients that seek care in the ED; documentation of MSEs; documentation of whether the patient refused treatment, was denied treatment, or was treated, admitted, stabilized, and/or transferred or discharged; and physician on-call lists. The central log needs to be kept for a minimum of 5 years.

8

Have in place a chain-of-command procedure to address on-call physicians who challenge the EMTALA process or refuse to appear bedside when consulted to stabilize a patient with an emergency medical condition. The hospital's on-call policies should define the responsibilities of on-call physicians, including always responding without unnecessary delay to requests to come and treat a patient. Policies also should state who has the final authority to call in a physician to provide stabilizing treatment.

9

Be sure that the hospital is able to validate by chart review that a QMP has completed an MSE and determined that the patient's condition has stabilized before releasing that patient from the ED to outpatient follow-up medical care. Keep in mind that an EMTALA reviewer will check for documentation of treatment, stabilization, and appropriateness of discharge and/or transfer.

10

If the hospital does not have an inpatient bed, an operating room available, or the capability or resources to stabilize the patient, then a QMP must arrange for an EMTALA-compliant transfer to another facility that does have the capability. For hospitals that will provide a higher level of care, ensure that transfer agreements are in place. These agreements should clearly state which personnel have authority to accept transfers.

11

Do not ask patients seeking emergency care for payment until after their emergency medical conditions have been stabilized per EMTALA or they have been admitted as inpatients to the hospital.

12

Carefully evaluate and strengthen policies and procedures related specifically to psychiatric screening examinations, stabilizing care of psychiatric patients boarding in EDs, and transfer policies.

Resources

For more information about EMTALA, please see MedPro's *Risk Resources: Emergency Medical Treatment and Labor Act*.

Endnotes

[1] Relias Media. (2016, July 1). *EMTALA still a risk, but some are letting down their guard.* Retrieved from www.reliasmedia.com/articles/138137-emtala-still-a-risk-but-some-are-letting-down-their-guard

[2] Zuabi, N., Weiss, L. D., & Langdorf, M. I. (2016). Emergency Medical Treatment and Labor Act (EMTALA) 2002-2015: Review of Office of Inspector General patient dumping settlements. *Western Journal of Emergency Medicine, 17*(3):245-251.

[3] Stanford University Health Care. (n.d.). Emergency Medical Treatment and Labor Act (EMTALA).

[4] American College of Emergency Physicians. (n. d.). *EMTALA fact sheet.* Retrieved from https://www.acep.org/life-as-a-physician/ethics--legal/emtala/emtala-fact-sheet/; Thornsberry, M. (2019, January 28). *EMTALA education: A way to mitigate risk.* American Association for Physician Leadership. Retrieved from https://www.physicianleaders.org/news/emtala-education-way-mitigate-risk; Irving, A. V. (2014, October 13). *Policies and procedures for healthcare organizations: A risk management perspective.* Patient Safety & Quality Healthcare. Retrieved from https://www.psqh.com/analysis/policies-and-procedures-for-healthcare-organizations-a-risk-management-perspective/; American Kusserow, R. P. (2014, February). *EMTALA compliance high risk area.* Retrieved from https://www.compliance.com/resources/emtala-compliance-high-risk-area/

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