Emergency Medical Treatment and Active Labor Act (EMTALA)

What Physicians Need to Know

January 2017
What is EMTALA?

- **Emergency Medical Treatment & Active Labor Act.**

- Federally-mandated requirement [42 CFR § 489.24]. Known as the Anti-Dumping Law”.

- 3 basic duties:

  1. Provide an appropriate Medical Screening Examination (MSE) on any person who *comes to the Emergency Department* and requests examination or treatment; and

  2. If determined that an Emergency Medical Condition (EMC) exists, either *stabilize* the patient’s condition or provide an appropriate *transfer*; and

  3. For hospitals with specialized capabilities or facilities, accept transfers of patients in need of those specialized services if they have the capacity to treat them.
To Whom does EMTALA Apply?

• All Medicare-participating hospitals.

• Any physicians responsible for examination, treatment, or transfer of patient in an ED—including on-call physicians.
When does EMTALA Apply?

When an individual “Comes to the Emergency Department”** and requests care.

** “Prudent Layperson” Standard:

Where an individual’s appearance or behavior would cause a prudent layperson observer to believe that examination or treatment is needed

– Care must be provided regardless of ability to pay, insurance status, citizenship, race, disability, or any other protected status
Where Does EMTALA Apply?

- **Dedicated Emergency Departments:**
  - Downtown Campus ED
  - Community Campus ED and L&D

- **Hospital Property**
  - **Includes:**
    - Entire Downtown Campus*
    - Entire Community Campus*
      * Including parking lots, sidewalks and driveways, and hospital departments or buildings within 250 yards of the hospital’s main buildings.
  - **Does not include:**
    - Areas and facilities not part of the Hospital, such as private MD offices, nursing homes or other entities that participate separately under Medicare.

- **Ground or Air Ambulances** on hospital property for presentation at Emergency Department
Other Hospital Locations

• Persons who seek emergency care at Hospital facilities that are not subject to EMTALA still must receive appropriate care as provided in Upstate policies and procedures.

• Examples:
  – Joslin Diabetes Center
  – Hematology Oncology Associates of Onondaga Hill
Basic Requirements of EMTALA

A person who comes to the Emergency Department seeking care for a medical condition must be provided a Medical Screening Examination (MSE). The purpose of the MSE is to determine whether an Emergency Medical Condition (EMC) exists.

If hospital determines the person has an EMC, further examination and treatment must be provided until stable. If the hospital does not have the capability to treat the patient, the patient must be transferred in accordance with EMTALA.

- A hospital may not transfer an unstable patient except as permitted by specific guidelines of EMTALA.
- A hospital with specialized capabilities or facilities (burn units, neonatal intensive care units, trauma centers) may NOT refuse to accept a patient transfer if it has capacity to treat the patient.
Medical Screening Exam (MSE)...

- Is the process (examination and evaluation) required to reach the point where it can be determined whether an individual has an EMC or not.

- Must include all services (within the hospital’s capabilities) that in ED/treating physician’s judgment are necessary to screen and / or stabilize an EMC. These services include the use of on-call physicians when necessary.

- Must be performed by a “Qualified Medical Person” (QMP):
  - MD, DO, medical resident with hospital privileges.
  - Healthcare professional within the scope of their licensure and who are authorized by the board and bylaws and have hospital privileges to perform MSEs.

- MSE includes use of on-call physicians as needed.
Emergency Medical Condition (EMC)...

• Acute symptoms of such severity that lack of immediate medical attention could reasonably be expected to:
  – Place the person’s health (or the health of their unborn child) in serious jeopardy, or
  – Cause serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

• Examples:
  – Pregnancy with contractions
  – Severe pain
  – Psychiatric disturbance
  – Symptoms of substance abuse
Actions after an MSE reveals an EMC exists

- Admit the patient to the hospital, or
- Stabilize the patient for discharge,
  - Ensure ability to obtain outpatient care.
  - Provide discharge instructions and summary of care provided.
- Or stabilize the patient for transfer.
  - Patient must be able to remain stabilized and not deteriorate.
  - Accepting facility must have a physician that accepts the transfer
  - EMTALA permits transfer of Unstabilized individuals only in limited circumstances
On-Call Physicians

• Hospitals are required to maintain a list of physicians who are on-call to respond, examine and treat patients with EMCs.

• EMTALA requirements for on-call physicians include:
  – Respond to the hospital when requested to attend to patients in a timely manner, and
  – Complete an MSE or provide stabilizing care unless circumstances beyond their control prevent a response.
**Appropriate Transfer**

- Transferring Hospital (TH) treats individual within its capacity to minimize the risks to the health of individual/unborn child.

- Physician/QMP certifies they explained risks and benefits of the transfer to the person & the benefits expected from care at the Receiving Hospital (RH) outweigh risks of transfer. Patient or rep signs consent (or refusal is documented per policy).

- RH has available space & qualified personnel to treat the individual & accepts the transfer.

- TH sends RH all available medical records & test results related to the presenting EMC. Other records (e.g. test results not yet available) are sent as soon as practicable.

- Person is transferred using qualified personnel & transportation equipment as required, including use of necessary & medically appropriate life support measures during the transfer.
Transfer of Unstabilized Individuals

EMTALA permits transfer of an individual with an unstabilized EMC in only 2 instances:

1. The hospital does not have the capacity or capability to stabilize the individual, *and*
   the physician/QMP certifies that the benefits of the transfer outweigh the risks;
   
or

2. The individual or person acting on the patient’s behalf insists on transfer even after being informed of the hospital’s obligations and the risks and benefits of the transfer.
Receiving Hospital Obligations

- If a hospital has specialized capabilities or facilities, it must accept transfers of patients who need if the hospital has the capacity to treat them.

- At Upstate, all requests for emergency transfers are coordinated through the Upstate Transfer Center.
Reports and Suspected Violations

• Example from EMTALA:
  – After initial exam, ED physician determines an individual requires services of on-call physician and notifies him/her.
  – The on-call fails/refuses to appear within a reasonable period of time.
  – ED physician orders transfer because without the on-call’s services, benefits of transfer to another facility outweigh risks of transfer.
  – ED physician must include in the sending records the name and address of the on-call physician.
  – Both the on-call physician and the hospital are exposed to potential penalties and liabilities.

• All suspected violations must be immediately reported to the hospital.
  – Administration is responsible for investigating incidents and reporting any violations.
  – Failure to report may in itself be a violation
Penalties and Liabilities

On-Call Physicians:
- $50,000 per violation
- Termination from Medicare and Medicaid for gross and flagrant violations
- Fines/losses not covered by any insurance
- Public notice of violation
- Individual liability in civil lawsuits

Hospital
- $50,000 per violation
- Termination from Medicare and Medicaid for gross and flagrant violations
- Public notice of violation of law
- Fines/losses not covered by any insurance
- Public notice of violation
Resources/Questions

• Upstate EMTALA and Transfer policies and forms are available on the Upstate Policy website.

• Upstate Transfer Center: 464-5449 or 1-866-464-5449

• Legal Department: 464-4700