EMTALA obligations when the hospital owns & operates the ground or air ambulance

JOYCE DANNER, RN, MSN
HEALTH QUALITY REVIEW SPECIALIST
CMS KANSAS CITY REGIONAL OFFICE
(816) 426-6469
JOYCE.DANNER@CMS.HHS.GOV
History of EMTALA

- Public law 99-272 added the anti-dumping provisions to sections 1866 & 1867 of the Social Security Act
  - Ensures that individuals with emergency medical conditions are not denied essential lifesaving services.

- 1989 PL 101-239 further refined
  - Hospitals maintain a physician call list, may not delay or predicate treatment on ability to pay.

- 2003 PL 108-173 further refined
  - Requires CMS to obtain a medical opinion prior to fines or excluding a hospital from the Medicare & Medicaid program.

- Deficit Reduction Act 2005
  - Clarified EMTALA requirements to state that, even if a hospital does not have an emergency department, they must nonetheless accept transfers of cases when they have the capacity to provide appropriate care.
  - The full text of the statute can be found in any public library's reference section under 42 U.S.C.A. Section 1395dd et seq.
  - The regulation can be found at http://www.ssa.gov/OP_Home/ssact/title18/1867.htm
EMTALA was enacted in response to the practice of some hospitals refusing to see or transferring the poor and uninsured.
Hospital property – what we mean

- Includes the entire main hospital campus as defined in § 413.65(b).
  - This means the parking lot, driveway, sidewalks, outpatient labs and clinics, cafeteria, public restrooms, the ED waiting room, and hospital owned & operated ambulances.
  - Any site within 250 yards of a principal building on the hospital campus, excluding non-medical facilities, such as banks, shops or restaurants.

- Specifically excluded from the definition of hospital property are areas and structures not considered part of the hospital, such as physicians’ offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare or restaurants, shops, or other nonmedical facilities.
Basic EMTALA requirements

The specific requirements of EMTALA are incorporated in each hospital’s Medicare provider agreement.

The hospital is obligated to provide these services regardless of the individual’s ability to pay & without delay to inquire about the individual’s method of payment or insurance status.

A hospital must accept the transfer of an individual w/an unstable emergency if it has the specialized capabilities necessary to treat the emergency.
Comes to the DED – what we mean

- Individual comes to the DED and requests examination or treatment of a medical condition, or has a request made on his/her behalf;
- Individual comes to the hospital and requests care for an emergency (higher request threshold), or a prudent layperson would believe the individual had an emergency;
- Individual comes to the DED by ambulance
(3) The individual is in a ground or air ambulance owned and operated by the hospital ... even if the ambulance is not on hospital grounds.

However, an individual in an ambulance owned and operated by the hospital is not considered to have “come to the hospital's emergency department” if—

§ 489.24 (b) Definitions
Implications for EMS & pre-hospital care

(i) the ambulance is operated under communitywide emergency medical service (EMS) protocols that direct transport to a hospital other than the hospital that owns the ambulance; for example, to the closest appropriate facility.

In this case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property;
Implications (continued)

(ii) The ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the hospital that owns the ambulance ..., or

(4) an ambulance not owned or operated by the hospital is diverted prior to presenting on hospital property. However, if the ambulance disregards the hospital’s diversion instructions and presents on hospital property, the individual has come to the DED.

- The hospital’s EMTALA obligations are triggered
If hospital EMS personnel on board the ambulance determine that transporting the individual to the owner hospital would put the patient’s life or safety at risk, we recognize that there may be some situations in which redirection of the ambulance is necessary to protect the life or safety of the individual and that under these circumstances it would not be an EMTALA violation to transport the individual to the closest hospital capable of treating his or her condition.
With respect to redirection of an ambulance at the request of the individual’s family, we believe existing regulations regarding “refusals of treatment” would permit the ambulance to transport the individual to another facility. A medical record for the individual must be established and the refusal clearly documented in that record, in accordance with these regulatory requirements (§ 489.24(d)(3)).
Dedicated Emergency Department

- Must meet one of the following criteria regardless if it is on or off campus
  - Licensed by the state as an ED;
  - Known to public that it provides care for emergency medical conditions (EMCs) on an urgent unscheduled basis;
  - During the preceding calendar year it provided treatment of EMCs on an urgent unscheduled basis for at least 1/3 of all its outpatient visits.

- A DED could include a hospital’s
  - Labor & Delivery Unit;
  - Psychiatric Unit;
  - Urgent Care Clinic (if it is participating in Medicare through a hospital).
It is not appropriate for a hospital to “log in” an individual and not provide a medical screening examination.
Medical Screening Examination (MSE) – what we mean

- Appropriate exam sufficient to detect the presence or absence of an EMC;
- Continuum of assessment and reassessment;
- Performed by qualified medical personnel;
- Extent and quality of the MSE is subject to review by the State Quality Improvement Organization.

Hospitals are not obligated to provide a MSE under EMTALA when:
- There is no request for care (unless the prudent layperson standard)
- The individual requests preventive care
- Before presenting to the DED, the individual has begun to receive scheduled outpatient services
- The individual is an inpatient
- Use of a hospital’s helipad when no request for care was made (unless the sending hospital has not conducted the MSE). If as part of the EMS protocol, EMS activates helicopter evacuation, the hospital w/the helipad is not obligated if they are not the intended receiving hospital.
Emergency Medical Condition - what we mean

- Emergency medical condition means:
  - a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in -
    - Placing the health of the individual in serious jeopardy
    - Serious impairment to bodily functions, or
    - Serious dysfunction of any bodily organ or part; or
    - With respect to a pregnant woman who is having contractions, that there is inadequate time to effect a safe transfer to another hospital before delivery, or that transfer may pose a threat to the health or safety of the woman or the unborn child.

- If an emergency medical condition is found, the hospital must do everything within its capability, including the use of ancillary services and on-call physicians, to stabilize the individual.

- An individual expressing suicidal or homicidal thoughts or gestures, if determined to be dangerous, would be considered to have an EMC.
Stabilizing treatment – what we mean

- Within the capabilities of the staff and facilities available at the hospital, further medical examination and treatment as required to stabilize the emergency regardless of the individual’s payer source or financial status.

- 42 CFR 489.24(b) defines stabilized to mean: ... no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer (discharge) of the individual from the hospital; or that a woman has delivered the child and placenta.

- An individual is stabilized if the treating physician or QMP has determined within reasonable clinical confidence, that the EMC has been resolved.

- If the hospital is unable to stabilize an individual within its capability, an appropriate transfer should be arranged.
Appropriate transfer – what we mean

- If an individual at a hospital has an emergency medical condition that has not been stabilized, the hospital may not transfer unless:
  - The hospital provides medical treatment within its capacity that minimizes the risk to the individual’s health;
  - The receiving hospital agrees to accept the transfer and has available space and qualified personnel to provide treatment;
  - The hospital (transferring) sends to the receiving hospital all medical records related to the individual’s emergency;
  - Arranges the transport using qualified personnel and equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer.
Recipient Hospital Responsibilities – what we mean

- Medicare participating hospital that has specialized capabilities or facilities (including but not limited to burn units, trauma units, neonatal intensive care units, or with respect to regional referral centers) may NOT refuse to accept an appropriate transfer from a referring hospital (DED) within the boundaries of the U.S.

  - The provisions apply to any participating hospital with specialized capabilities, regardless of whether the hospital has a DED.
  - The provisions do NOT apply to an individual who has been admitted to a referring hospital.
  - A hospital with specialized capabilities that delays the treatment of an individual with an emergency who arrives as a transfer from another hospital ED could be in violation of EMTALA, depending on the circumstances of the delay.
Hospital settles with the OIG
Questions?
EMTALA Resources


http://www.ssa.gov/OP_Home/ssact/title18/1867.html#t