

PATIENT DUMPING: A KEY COMPLIANCE ISSUE

Rehabilitation facilities that bill under a hospital provider number must be cognizant of the Emergency Medical Treatment and Labor Act.

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The headlines today grimly report sad stories of patients refused emergency treatment at healthcare institutions across the country. Indeed, patients are denied such care notwithstanding the existence of the Emergency Medical Treatment and Labor Act (EMTALA) which ensures medical treatment to any person seeking medical care for an emergency medical condition.

Recently in Chicago, a fifteen-year old boy was shot while playing basketball not far from a hospital's emergency room department. His friends brought him within thirty-five feet of the hospital's emergency department. However, the emergency room staff refused to leave the department to render care because of hospital policy. A police officer eventually carried the wounded teen into the hospital. Unfortunately, it was too late to save the boy's life.

EMTALA, commonly referred to as the anti-dumping law, was passed as a part of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). The anti-dumping statute was created due to the increasing practice of hospitals turning away indigent patients who had come to the hospital seeking medical services for emergency medical conditions or who were women in labor. Often, the hospitals would transfer indigent patients to other facilities, sometimes even forcing the patients to use their own vehicles.

Requirements of EMTALA

EMTALA applies to all Medicare participating hospitals; however, it does not only protect Medicare beneficiaries. The statute protects any person seeking medical care for an emergency medical condition. EMTALA imposes three basic requirements on hospitals that provide emergency services. The requirements include:

1. The hospital must provide an appropriate medical screening exam to anyone coming to the hospital's emergency department seeking emergency medical care;

2. For any individual that has come to the hospital and is determined by the hospital's medical staff to have an emergency medical condition, the hospital must either:
 - a. Stabilize the emergency medical condition, or
 - b. Transfer the individual to another hospital.

3. A hospital must not transfer a patient with an emergency medical condition that has not been stabilized unless the following conditions are met:
 - a. The transfer must be appropriate;
 - b. The individual, or person legally responsible for the individual, must request the transfer; and
 - c. A physician certifies in writing that the benefits from transferring the individual to another facility outweigh the risks.

To satisfy the requirement that an "appropriate medical screening exam" be provided, the exam must be the same screening exam that the hospital would perform on any individual coming to the hospital's emergency department with the same signs and symptoms, regardless of the individual's ability to pay. The exam must be performed equitably in comparison to other patients with similar symptoms.

Once a screening examination has been performed and the physician or other medical staff member has determined that no emergency medical condition exists, the hospital has no further obligation under EMTALA. The patient may then be referred to a "fast track" or other hospital clinic or to the patient's physician for further treatment. On the other hand, the emergency department may decide to treat the individual, however, this may be more costly and inefficient for a busy emergency room. If, however, the patient does have an emergency medical patient, then the hospital must treat and stabilize the patient or transfer the individual.

An individual is considered to have "come to the hospital's emergency department," for EMTALA purposes, in a variety of situations. For instance, if a patient arrives at the hospital and is on its premises including the parking lot, sidewalk and driveway and requests medical care, the patient is considered to have come to the hospital's emergency department for EMTALA application. In addition, any individual who is in an ambulance owned and operated by the hospital, even if the ambulance is not on hospital grounds, and requests medical services, is considered to have come to the emergency room.

Similarly, an individual that is in a non-hospital owned ambulance that is on hospital property has come to the hospital's emergency room. However, when an individual in a non-hospital owned ambulance that is off of the hospital's campus is not considered to have come to the hospital's emergency department,

even if one of the ambulance staff contacts the hospital and informs the hospital that they want to transport the individual to the hospital for an examination and treatment. In this situation, the hospital may deny access to the patient if it is in diversionary status where it does not have the staff or facilities to accept any additional emergency patients. If, however, the ambulance staff disregards the diversionary status of the hospital and brings the individual to the hospital, the individual is considered to have come to the emergency room.

EMTALA Application In Off-Campus Venues

In an effort to reduce the number of non-emergent cases that plague hospital emergency departments, hospitals are developing “fast track” or other urgent care departments either on the hospital’s campus or at a separate campus location. These facilities are usually either hospital-owned or physician-owned. If the hospital owns the facility and is billing under the hospital’s provider number as an outpatient department of the hospital, then EMTALA applies to that facility.

When a hospital develops an urgent care or “fast track” facility off of the main campus on non-contiguous property, the facility is simply an outpatient department of the hospital that bills under the hospital’s Medicare provider number. EMTALA will apply to these types of facilities as well even though they are not on the hospital’s campus. If a patient were to come to the off-campus urgent care or “fast track” facility seeking emergency medical care, the facility would have to provide an emergency screening examination and stabilization within the best of its ability until the facility could arrange an appropriate transfer. Hospitals should develop policies and procedures for off-campus “fast track” and urgent care facilities in keeping with all of the EMTALA requirements and particularly the screening and transfer requirements.

In addition to urgent care and “fast track” facilities, EMTALA is likely to apply to other off-campus hospital-owned clinics and outpatient facilities as well. Any hospital-owned clinic that bills under the hospital’s provider number will have to provide an emergency medical screening exam to anyone coming to the facility seeking emergency medical services. If an emergency medical condition were found to exist, the facility would be required to treat the patient to the best of its capabilities. It is not likely, however, that off campus clinics would have the diagnostic equipment and personnel as would exist in a hospital emergency department. Therefore, the off campus clinic should not be held to the standards of a hospital’s emergency department but should comply with the EMTALA requirements to the best of its abilities. Unless the facility can stabilize the person, the facility should conduct an appropriate transfer.

Due to the applicability of EMTALA to off-campus facilities, the hospital should conduct inservice educational programs to ensure that the staff at all of its off-site facilities is aware of their requirements under EMTALA. It would also seem

prudent to ensure that each facility has a staff member continually present during the facility's operating hours that is trained in lifesaving skills.

For example, a hospital may own several off-campus rehabilitation clinics that bill under the hospital's provider number. Staff at the rehabilitation clinics must be prepared to address the needs of emergency patients according to EMTALA. In most instances, the patient will require treatment at the hospital. However, it is vital that personnel at the clinic do not refuse to treat the individual to the best of their abilities because they do not know that EMTALA applies to off-campus providers as well as the hospital. All outpatient department policies and procedures should address the possibility of having to accommodate emergent patients according to the EMTALA provisions.

EMTALA poses a very real compliance concern for healthcare providers. The application of the statute is not limited to emergency departments but is extended to even off-campus locations that provide solely outpatient services. It is incumbent upon hospitals and health systems to prepare the staffs of their departments to recognize their duties under EMTALA and to be equipped and knowledgeable about how to most appropriately address the needs of emergent patients and to do so while complying with EMTALA.

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