Emergency Medical Treatment and Labor Act (EMTALA)

University of Miami Hospital
May 4, 2016
LEARNING OBJECTIVES

1. EMTALA Overview
2. Procedural Requirements
   a. Medical Screening Exam (MSE)
   b. Stabilize
   c. Transferring Patients
3. Administrative Requirements
   a. Signage
   b. AMA Forms
   c. On-Call Physician List
4. Transfer Process
5. Violations and Penalties
6. Summary
7. Questions/Contact
EMTALA OVERVIEW
WHAT IS EMTALA?

• EMTALA: Emergency Medical Treatment and Labor Act
• Enacted by Congress in 1986 to stop “patient dumping.”
  – Patient dumping is the refusal to treat indigent patients with emergencies as well as the premature discharge of unstable and/or uninsured patients.
• EMTALA requires Medicare/Medicaid participating EDs to provide medical screening and stabilize patients in need of emergency care, within the hospital’s capability, regardless of a patient’s ability to pay.
• EMTALA has two basic requirements:
  1) Screening requirement
  2) Stabilization and appropriate transfer
• EMTALA is responsibility of the institution (UMH), not one specific person or provider.
Goal of EMTALA:

Equal access to emergency care, regardless of ability to pay.
PROCEDURAL REQUIREMENTS
PROCEDURAL REQUIREMENTS

EMTALA requires that hospitals with a Dedicated Emergency Department (DED) provide the following, regardless of the patient’s ability to pay:

- Medical Screening Examination (MSE),
- Necessary Stabilizing Treatment, and/or
- Appropriate Transfer
MEDICAL SCREENING EXAM (MSE)

• UMH’s ED must screen patients who ask for emergency care, regardless of their ability to pay.

• The purpose of the MSE is to determine whether the patient has an Emergency Medical Condition (EMC).
  – A patient has an EMC if his or her symptoms are severe enough to threaten their health, safety, or bodily function.
  – At UMH, a pregnant woman has an EMC if she is in active labor and cannot be safely transferred to another facility.
• The MSE should normally include:
  – Vital signs
  – History
  – Documented physical exam of involved area or system
  – If needed, ancillary tests and specialists available through hospital (e.g., lab tests, diagnostic tests and procedures, CT scans or other imaging services, etc.)
  – Continued monitoring
MEDICAL SCREENING EXAM (MSE)

- An appropriate Medical Screening Exam should be:
  - Applied in a non-discriminatory manner and shall not differ based on payment status, condition, race, national origin, disability, etc.
  - MSE must be performed regardless of ability to pay or insurance status.
- All patients receive a uniform screening exam based on their chief complaint and medical condition, regardless if they are a private patient, Medicaid patient, managed-care patient, indigent, illegal alien, or member of any other protected category.
MEDICAL SCREENING EXAM (MSE)

• Hospital must not:
  – Delay an MSE to request financial information.
  – Refuse to provide an MSE because the patient’s health insurance plan will not authorize an MSE.
  – Convince a patient to leave before an MSE, by pointing out the cost of emergency services.
UMH does **not** have a duty to provide MSEs to:

- Patients who come to off-campus locations that do not normally provide emergency medical services.
- Patients who come to a DED for routine services (for example, suture removal) and do not request emergency services.
- Admitted patients.
- Patients who develop an EMC during a scheduled outpatient procedure.
MEDICAL SCREENING EXAM (MSE)

• A patient may refuse to give consent for an MSE. If so, the hospital is not required to provide an MSE.

• The patient’s refusal must be carefully documented in the medical record.
  – An “Informed Consent to Refuse” form should:
    • Be completed by medical staff.
    • List the potential benefits and risks.
    • Be signed by the patient or his/her legal representative.
  – If the patient refuses to sign the form, the refusal must be documented.
MSE VIOLATIONS

• CMS has cited hospitals for:
  – Asking a patient financial questions before completing an MSE
  – Giving financial paperwork to a patient before completing an MSE
  – Requesting pre-authorization for an MSE from a patient’s insurance plan
COMPLETE MSE

Complete MSE

EMC?

NO

EMTALA obligation ends

YES

EMTALA obligation continues

- Stabilize patient
- Transfer patient
NECESSARY STABILIZING TREATMENT

UMH must provide stabilizing care to all patients with EMCs provided that UMH has:

• The **CAPABILITY** to provide the necessary care.
• The **CAPACITY**, using both on-duty staff and on-call staff as needed.
• A woman in active labor is stable only after she has delivered:
  – The baby
  – The placenta
• Hospitals with an Emergency Department must have specialists on-call at all times for all departments that provide medical services and specialties within the hospital’s capabilities (i.e., Urology must have a urologist on-call).
NECESSARY STABILIZING TREATMENT

A patient is considered stabilized when:

– No material deterioration of condition is likely within a reasonable medical probability, or
– EMC has resolved, even though underlying medical condition may persist.
– For pregnant women, child and placenta are delivered.
– For psychiatric conditions, person is protected and prevented from harming themselves or others.
NECESSARY STABILIZING TREATMENT

EMTALA ends once the patient is stabilized, transferred, or admitted.
REFUSAL OF STABILIZING TREATMENT

• Patient may refuse to give consent for stabilizing care.
  – UMH is not required to provide care.
• The patient’s refusal must be carefully documented in the medical record.
• An “Informed Consent to Refuse” form should be used. The form should list:
  – Potential benefits of accepting the offered services.
  – Risks of refusal.
  – Must be signed by the patient or his or her legal representative.
APPROPRIATE TRANSFER OUT OF UMH

• A transfer is appropriate when:
  – Transferring hospital provides treatment within its capability to minimize risk of harm to patient.
  – Transferring hospital contacts receiving facility and facility agrees to accept the transfer.
    • Identify person with authority to accept for receiving facility.
  – Transferring hospital sends:
    • Relevant records available at the time.
    • Name on-call physician who failed to respond, if any.
    • Additional records as soon as practicable.
  – Transfer effected through qualified personnel with proper equipment, including life support.
A hospital may only transfer an unstabilized patient if:

- The individual requests a transfer after being informed of the obligation to provide further examination and/or treatment and the risks of transfer;

- A physician certifies in the medical record the benefits of transferring to another facility outweigh the risks of transfer to the patient (unborn child);

- The hospital does not have the capacity, equipment, and/or trained personnel to treat the patient; or

- The transfer is appropriate.
INFORMED CONSENT TO REFUSE

• What happens if a patient refuses treatment or transfer?
  – DOCUMENT using an Informed Consent to Refuse form
  – If the patient is unwilling to sign, document the refusal.

• Though some patients may refuse exam, treatment, or transfer, UMH **must always**:
  – Offer exam, treatment, or transfer.
  – Document the exam, treatment, or transfer that was refused.
  – Document that risks and benefits were explained to patient.
  – Document basis for refusal or transfer.
  – Take reasonable steps to secure written informed refusal.
  – If patient refuses to sign, document refusal.
ADMINISTRATIVE REQUIREMENTS
EMTALA requires explanatory signage in:
- Emergency Department entrances,
- Registration,
- Triage, and
- Treatment areas.

The signs must be written in the languages of the community.

At UMH and ABLEH, the signs must be printed in English, Spanish, and Creole.
ON-CALL PHYSICIAN LIST

• The on-call list must have names of specific physicians.
• List must give each physician’s on-call time and specialty.
• All hospital specialties must be covered at all times.
• The call list must be posted in a visible place in the emergency department.
• Call lists must be stored for five years, to keep a record of who was on-call when.
ON-CALL PHYSICIAN LIST

• On-call physicians must:
  – Respond promptly when called
  – Provide care at the hospital

• On-call physicians may **not** have an emergency patient transferred to a more convenient location, such as their office.
TRANSFER PROCESS
TRANSFER PROCESS

Before a transfer:

• The transferring hospital must provide medical treatment to make the transfer as safe as possible.

• The receiving hospital must agree to the transfer. It must have personnel and space to meet the needs of the patient.
  – Capability
  – Capacity
TRANSFER PROCESS

Under EMTALA, UMH must:

• Provide medically appropriate transfers

• Accept requests for incoming transfers

• The accepting hospital must have capacity, proper equipment, and trained personnel to treat the patient. The accepting hospital cannot deny the transfer if they meet these criteria.

  – Cannot divert inbound ambulance unless you are on diversionary status.
TRANSFER PROCESS

• Transfer is appropriate only for medical reasons.
• For example, an emergency patient is at Hospital X. Special medical equipment is needed to stabilize the patient. Hospital X does not have this equipment. Hospital Y does have the equipment. For this patient, transfer from Hospital X to Hospital Y would be medically appropriate.
• A transfer is **not** appropriate for:
  – Financial reasons
  – Physician or hospital convenience
TRANSFER PROCESS

• Transfers must be **certified** or **requested**.

• **Certified**: The treating physician must certify that the expected benefits of transfer outweigh the risks.
  – The specific benefits and risks must be documented

• **Requested**: The patient may request a transfer.

• UMH must make sure that the patient understands:
  – Duty of EMTALA is to provide stabilizing care
  – The potential risks of transfer
TRANSFER PROCESS

• Under EMTALA, transferring hospitals must send documentation to receiving hospitals.
• The patient’s emergency medical records must be sent, including:
  – Signs and symptoms
  – Any treatment given
  – Results of any lab tests or imaging studies
• The transferring hospital also must send:
  – The physician’s certification for transfer or the patient’s request for transfer.
  – The name and address of the on-call physician who did not respond to call (if any).
TRANSFER PROCESS

- Physician certification or patient request
- Medical necessity
- Appropriate transfer under EMTALA
- Treatment to minimize transfer risks - Agreement from receiving hospital
- Pertinent documentation sent to receiving hospital
- All necessary medical attendants and equipment for transfer
Under EMTALA, UMH must accept a request for incoming transfer if:

- The hospital has everything needed to treat the patient.
- The transferring hospital is less able to treat the patient.

Receiving hospitals must report possible EMTALA violations within 72 hours.

- For example, an emergency patient is at Hospital X. The patient needs a specialist. The specialist on-call at Hospital X does not respond to call. As a result, the patient must be transferred to Hospital Y. Hospital Y must report this transfer within 72 hours.
Hospitals are allowed to decline requests for incoming transfer under certain circumstances:

- The patient does not need the medical services of the hospital.
- The hospital does not have space for the patient.
- The transferring hospital is able to treat the patient fully.
DECLINING A REQUEST: POTENTIAL EMTALA VIOLATION

• Hospitals are allowed to decline requests for incoming transfer under certain circumstances. However, declining a request for incoming transfer can be risky.
• CMS expects receiving hospitals to do everything possible to accept incoming transfers.
  – Use on-call personnel to treat the patient.
  – Use step-down beds or early discharge to make room for the patient.
• If possible, the hospital must take these steps. Otherwise, CMS may cite the hospital for an EMTALA violation.
• After an appropriate transfer, the transferring hospital has no further EMTALA duty to the patient.
TRANSFER PROCESS

- Physician certification or patient request
- Treatment to minimize transfer risks
  - Agreement from receiving hospital
- Pertinent documentation sent to receiving hospital
- Medical necessity
- Appropriate transfer under EMTALA
- All necessary medical attendants and equipment for transfer
- Hospital’s EMTALA obligation ends
VIOLATIONS AND PENALTIES
EMTALA VIOLATIONS

- CMS reviews all EMTALA complaints.
- If a complaint seems legitimate, CMS asks state licensing officials to investigate (AHCA).
- If the EMTALA violation is proven, CMS informs the hospital of its two options:
  1. The hospital must submit a plan of correction to CMS.
  2. The hospital will lose its status as a Medicare provider in 23 days.
- Hospitals have been terminated from Medicare because of EMTALA violations.
PENALTIES FOR VIOLATIONS

• CMS reports the findings of all EMTALA investigations to the Office of the Inspector General (OIG).
• If the OIG can prove an EMTALA violation, it can impose fines.
• Fines are:
  – Up to $50,000 per violation for hospitals with 100 beds or more.
  – Up to $50,000 per violation for individual physicians, including on-call physicians.
  – Termination of the hospital or physician's Medicare provider agreement and exclusion from Medicare and Medicaid.
• These fines are NOT covered by malpractice insurance.
• There is no violation if a patient refuses examination and/or treatment unless there is evidence of coercion.
SUMMARY
SUMMARY

• Cannot delay exam or treatment to inquire about payment.
• Cannot seek preauthorization from insurer until after you have conducted exam and initiated stabilizing treatment.
• Do not suggest to the patient that:
  – They should leave.
  – They could obtain services elsewhere at less cost.
  – Insurance may not cover treatment.
  – They should go to another hospital.
• As long as it does not delay or discourage exam or treatment, hospital may:
  – Follow reasonable registration process (e.g. obtain demographics, obtain insurance information or card, identify emergency contact, etc.)
SUMMARY

• Do what is in the best interest of the patient.
• Document every step thoroughly.
• Train staff and document training.
• Maintain on-call list.
• Maintain and periodically review Central Log.
• Immediately respond to suspected violations.
• Report on-call physicians who failed to respond.
• Report receipt of improper transfer.
QUESTIONS?

Please contact the Office of Regulatory Compliance with any questions or concerns.

Don Soffer Clinical Research Center
1120 NW 14th Street | Suite 1289 | Miami, FL 33136
Office: (305) 243-2259 | Fax: (305) 243-6487
regulatorycompliance.med.miami.edu