The Emergency Medical Treatment and Labor Act—A Primer

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In the 1980s, not too unlike today, many hospitals faced financial constraints and other cost containment challenges in a changing health care environment. A particular problem was the increasing number of uninsured or underinsured patients. Some hospitals attempted to minimize their losses from uncompensated emergency care by turning away—or transferring to other facilities—emergency patients who were unable to pay. In response to these increasingly common events, including egregious episodes in which hospitals refused to treat pregnant women in active labor, Congress enacted the Emergency Medical Treatment and Labor Act ("EMTALA"), also known as the Patient Anti-Dumping Law. In doing so, Congress codified what it thought was every hospital's ethical obligation to treat any person in need of emergency care without regard to that person's ability to pay.

EMTALA REQUIREMENT

All hospitals that participate in the Medicare program, including for-profit hospitals, must comply with EMTALA. At its core, EMTALA requires a hospital to provide every person who comes to the hospital's emergency department with a medical screening exam, any necessary stabilizing treatment, and—if the patient cannot be stabilized—transfer in accordance with the EMTALA transfer rules. During EMTALA's 25 year history, the Centers for Medicare and Medicaid Services ("CMS"), the agency that enforces EMTALA, has issued regulations and guidelines that further clarify a hospital's duty to comply with EMTALA.

Albeit relatively simple at first glance, compliance with EMTALA can prove challenging, considering the innumerable scenarios that a hospital and its emergency department face on any given day. The EMTALA obligation first arises when an individual comes to the hospital for emergency treatment, but the concept of emergency treatment goes well beyond the emergency department's four physical walls. A person does not have to physically enter the hospital's emergency department for EMTALA to apply. The need for emergency treatment may have arisen while the person was anywhere on the main hospital property, including parking garages, lobbies, and sidewalks. And though EMTALA does not apply to off-campus facilities of the hospital, such as outpatient facilities or physician offices, those locations must have procedures in place to transfer to a hospital any person who arrives seeking emergency treatment.

MEDICAL SCREENING EXAM

Once the individual comes to the emergency department, the hospital must conduct a medical screening exam to determine whether an emergency medical condition exists. The examination must be conducted without delay or regard for financial status, by qualified personnel such as physicians, nurse practitioners, or physician assistants, and triage does not satisfy this requirement. In conducting the screening exam the hospital must utilize all hospital services, including ancillary services such as laboratory services and x-rays. If the hospital then determines there is no emergency medical condition, the hospital has satisfied its EMTALA obligations and it can release the individual. If, however, the individual does have an emergency medical condition, the hospital must provide stabilizing treatment.

STABILIZING TREATMENT

For emergency medical conditions the hospital must provide stabilizing care until the medical condition no longer is an emergency. The physician and hospital may choose to admit the patient for treatment, in which case the hospital has met its EMTALA obligation, or the physician may choose to treat the individual in the emergency department until the emergency is resolved. There may be situations, however, in which the emergency condition cannot be stabilized despite proper treatment or the hospital lacks the capability to provide the necessary treatment. In these cases, the hospital can transfer the individual to another facility, provided the transfer is effectuated

in accordance with EMTALA rules and the physician certifies that the benefits of transfer outweigh its risks.

TRANSFER OF UNSTABLE PATIENTS

Any transfer must be conducted in accordance with EMTALA, and there must be a receiving facility with adequate staff and space that has already agreed to accept the patient. The transferring hospital must: continue to provide care to minimize the risks of transfer, send medical records to the receiving facility, and arrange for appropriate transportation, such as an ambulance or air ambulance. If a receiving hospital determines that the transfer was inappropriate, it has an EMTALA obligation to report the violation to CMS.

Facilities that offer specialized care, such as a trauma unit, burn unit, or NICU, are subject to heightened requirements. If they have the capacity to accept an individual with an emergency condition, they must accept transfers from facilities that do not have these specialized capabilities. EMTALA includes this provision to prevent hospitals with specialized capabilities from refusing to treat or accept individuals who require higher levels of care.

EMTALA ENFORCEMENT

EMTALA enforcement is primarily complaint-driven. CMS has the right to investigate complaints it receives regarding potential EMTALA violations, and private citizens have the right to file suits claiming damages as a result of an EMTALA violation. Penalties are severe, ranging from fines of $50,000 to exclusion from the Medicare program. Due to the recent economic downturn, CMS has increased its attention to violations of EMTALA. CMS is concerned that hospitals will refuse to treat, or will inappropriately transfer, non-paying patients in order to minimize the impact of uncompensated care on their budgets.

EMTALA further requires hospitals with emergency departments to have on-call lists and on-call procedures. Physicians that are on-call have EMTALA obligations and can be penalized for violating EMTALA should the on-call physician refuse to see or treat a patient requiring emergency care.

FINAL THOUGHTS

EMTALA is meant to protect those individuals who do not have the financial means to pay for necessary emergency care. As a result, hospitals may not: delay the medical screening exam to inquire about insurance status; obtain prior authorization for emergency services; provide disparate treatment for the same medical condition based on an individual's ability to pay; or have detailed conversations about the individual's financial obligation so as to encourage the individual to leave the emergency department prior to being seen.

EMTALA was Congress' response to its belief that hospitals and physicians have an ethical obligation to provide basic treatment to individuals suffering from an emergency medical condition without regard to the person's ability to pay. In the 25-year history of EMTALA, CMS has issued numerous regulations interpreting EMTALA, along with a number of guidance documents to assist hospitals with EMTALA compliance. Nonetheless, for many hospitals compliance can be challenging, because of complex hospital configurations, the popular hospital campus model, the innumerable scenarios with which emergency departments are faced, economic conditions, and a host of other factors. The best action for hospitals to ensure EMTALA compliance is having informed medical and administrative staffs, detailed policies and procedures, adequate medical record documentation, and ongoing education and discussion.

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