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Why EMTALA is Worth Another Look: Enforcement on the Rise

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Part One of a Three-part Series

In this economic downturn, the number of uninsured patients is on the rise. The impact on hospital emergency departments, where uninsured patients often seek treatment for a medical condition, is almost assured. The result: an increase in anti-dumping enforcement for hospitals. With the increased number of uninsured and poor entering hospital emergency rooms as a means of obtaining health care services, EMTALA compliance is worth another look.

EMTALA Basics

In 1986, Congress enacted the Emergency Medical Treatment & Labor Act (EMTALA) in response to allegations of patient dumping by hospitals. At the time, some hospitals would not see patients with emergency conditions when those patients could not pay for the services, or would not properly screen uninsured patients before asking them to leave their emergency rooms. Under EMTALA, hospitals with emergency services that participate in Medicare must screen, stabilize and transfer when individuals present with emergency medical conditions and a request is made for an examination or treatment, regardless of their ability to pay.

A Medicare-participating hospital's EMTALA obligations are triggered when a patient presents at a hospital's campus for emergency services and a request is made for an examination or treatment for a medical condition. A hospital must first provide a screening examination of the patient. If, after an *appropriate medical screening*, the patient is found not to have an *emergency medical condition*, the hospital has no further obligations under EMTALA. Otherwise, after the appropriate medical screening, the hospital must provide the medically necessary medical treatment to stabilize the medical condition or transfer the patient as allowed under

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EMTALA. As a general rule, a hospital may not transfer a patient who is not stabilized without consent to the transfer and a physician certificate that the benefits of the transfer outweigh the risks. Hospitals with specialized medical treatment, such as hospitals with NICUs, trauma centers and burn units, must accept transfers.

Enforcement on the Rise

Patient dumping continues today even though EMTALA is a well-established area of law. CMS and the OIG, using their joint enforcement powers under EMTALA, are increasing their enforcement efforts. CMS, in conjunction with state survey agencies, investigates EMTALA complaints and can terminate the Medicare participation agreement with the hospital, while the OIG assesses penalties and determines exclusions from Medicare. EMTALA enforcement is complaint driven. These complaints can come from patients and family members but also can come from other hospitals, facilities and ambulance companies. In addition to federal penalties, an individual may bring a private cause of action under EMTALA if the hospital improperly transferred the individual and the individual suffered financial loss because of that transfer.

The OIG has already settled two EMTALA allegations this year. In the first settlement, a Florida hospital recently paid \$38,000 in civil monetary penalties in an EMTALA enforcement action. Allegedly, at the height of flu season, a patient with a history of mitral valve replacement was turned away with flu-like symptoms and a high fever. The triage nurse told the patient to go home and follow his primary care physician's orders. Two days later, the patient went to another hospital's emergency room that admitted him to the intensive care unit, where he died of the H1N1 virus.

In addition, this year another Florida hospital faced \$45,000 in penalties from the OIG when it allegedly violated EMTALA for failing to screen and stabilize a patient. An autistic patient presented to the emergency department after physically attacking his mother. The clinical psychologists asked for the patient's insurance

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information. The hospital told the mother that they did not take her insurance and that she needed to take her son elsewhere. The mother took the son to another facility, where he was admitted for six days for depression.

With EMTALA enforcement on the rise, hospitals would be wise to take the temperature of their EMTALA compliance. Part two of this three-part series will offer tips for hospitals to review their EMTALA compliance.