



*Representing Kentucky Hospitals and Health Systems*

## **EMTALA Update 2021**

3 Part Webinar Series

Frequent Deficiencies by CMS for Hospitals

Laura A. Dixon, BS, JD, RN, CPHRM

[ldesq@comcast.net](mailto:ldesq@comcast.net)

### **Overview**

Every hospital that has an emergency department and accepts Medicare and Medicaid patients must follow the federal law and the Center for Medicare and Medicaid Services (CMS) Conditions of Participation Interpretive Guidelines on the Emergency Medical Treatment and Labor Act (EMTALA). Hospitals without emergency departments must comply with EMTALA if they have specialized capabilities. EMTALA can also impact obstetrical patients and behavioral health patients.

EMTALA remains a hot topic with CMS and OIG and should now be on the radar screen for every hospital. There have been a recent increased number of deficiencies and increased CMS and OIG activity. As such, it is important for hospitals to be prepared should a CMS surveyor walked into your hospital today to investigate an EMTALA complaint.

The EMTALA manual was updated in July of 2019. Although the OIG regulations are not contained in the CMS EMTALA CoP manual, they are important for all hospitals to be aware of those regulations.

The EMTALA penalties have more than doubled over the last several years, along with a cost-of-living adjustment, so it is almost \$105,000 per violation for hospitals over 100 beds. A recent article found that 30% of US hospitals and 34% of Critical Access Hospitals have violated EMTALA in the last decade. CMS also made a change in that some EMTALA investigations will occur 2 days after notification of a complaint. Additional topics addressed by CMS in relation to the

emergency department include the Born-Alive Infant Protection Act with an updated the survey memo on the issue.

Hospitals are required to report a potential EMTALA violation and can be cited for failure to do so. CMS issued a recent deficiency memo showing that over **5,350 hospitals** received deficiencies for failure to comply with the federal EMTALA law. Common deficiencies of emergency departments, including EMTALA citations, will be discussed during this program.

This program will also discuss a recent case against a hospital which was the largest EMTALA settlement of 1.2 million dollars. It is anticipated that healthcare will see larger EMTALA fines and more activity because of the higher fines and the OIG final changes. These changes are not in the CMS CoPs and will be discussed.

This 3-part webinar will include the regulations and interpretive guidelines. It will include all 12 sections and an expanded section for on-call physicians and the shared and community care plan process.

Hospitals will need to ensure their policies, procedures, and training is adequate to ensure compliance with EMTALA. The hospital must know how to do a medical screening exam, how to stabilize a patient and what constitutes an emergency medical condition. Transfers must be compliant with these requirements.

This webinar series will include discussion of a case that has created an enormous expansion of hospital and practitioner liability under federal law. The case, *Moses v. Providence Hospital and Medical Centers, Inc.*, No. 07-2111 (6th Cir. April 2009), overruled the CMS regulation that EMTALA obligations ends when the hospital admits the patient in good faith. Those states in the 6th Circuit (Ohio, Kentucky, Tennessee, and Michigan) must now follow this case as precedent. Sometimes the result may be different if the patient files a lawsuit as opposed to filing a complaint with CMS. This case illustrates the importance of understanding the role that case law has on the outcome of EMTALA litigation. Patients can complain to CMS and request an investigation, or they have the option of going and directly filing a lawsuit.

## Objectives

- Recognize EMTALA as a frequently cited deficiency for hospitals (Part 1)
- Recall that CMS has a manual on EMTALA that all hospitals that accept Medicare must follow (1)
- Describe that the hospital must maintain a central log (Part 2)
- Discuss the hospital's requirement to maintain a list of the specific names of physicians who are on call to evaluate emergency department patients (2)
- Describe the CMS requirements on what must be in the EMTALA sign (2)
- Describe the hospital's requirements regarding a minor who is brought to the ED by the babysitter for a medical screening exam (Part 3)
- Discuss when the hospital must complete a certification of false labor (3)

## Agenda

This program will cover the following (Part 1 of 3):

- OIG changes that every hospital should be aware of
- Two-day visit with immediate jeopardy
- Common deficiency report by CMS
- Basic concept of EMTALA
- Revised manual
- New survey memos
- Penalties have more than doubled
- How to locate copy of the EMTALA regulations
- OCR memo and EMTALA investigations
- OIG advisory opinions on EMTALA
- Compliance program
- CMS Survey memos
  - EMBOLA and EMTALA memo
  - CMS Memo on EMTALA and telemedicine
  - CMS memo on payment and collections
- Impact of COVID-19 on EMTALA
- EMTALA definitions and requirements
- The Joint Commission standards
- EMTALA sign requirements

- To whom EMTALA applies

This program will cover the following (Part 2 of 3):

- Reasonable registration process
- Financial questions from patients
- Patients who sign out AMA
- Specialized capability
- Policies and procedures required
- On-call physician issues
- Hospital recommendations
- Dedicated emergency department
- Central log
- Special responsibilities
- Meaning of “comes to the ED”
- Definition of hospital property
- EMTALA and outpatients
- Capacity
- Dedicated emergency department
- Inpatients and observation patients

This program will cover the following (Part 3 of 3):

- Medical screening exam
- Certification of false labor
- Born alive law and EMTALA
- Minor child request for treatment
- Telemetry
- When diversion is allowed
- Parking of patients
- Helipad
- State plans and EMTALA
- Who can be a QMP
- Waiver of sanctions
- Requests for medications
- Blood alcohol tests

- Emergency medical condition
- Stabilization
- OB patients
- Born-Alive Infant Protection Act and MLN clarification
- Transfer and transfer forms
- Behavioral health patients
- QIO role with EMTALA

## **Who Should Attend?**

- Emergency Department Managers
- Emergency Department Physicians
- Emergency Department Nurses
- ED Medical Director
- Risk Managers
- OB Managers and Nurses
- Behavioral Health Director and Staff
- Chief Nursing Officer
- Nurse Supervisors
- Nurse Educators
- Staff Nurses
- Outpatient Directors
- Compliance Officers
- Legal Counsel
- Directors of Hospital-Based Ambulance Services
- Director of registration
- Registration staff and director
- ED education staff
- On call physicians
- Chief Medical Officer (CMO)
- Chief Nursing Officer (CNO)
- Chief Operating Officer (COO)
- Chief Financial Officer
- Patient Safety Officer
- Joint Commission Coordinator