

Behavioral Health Care Symposium 2021

**Forward Motion:**  
Moving a Crisis into Action



# EMTALA: What We All Have in Common

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## Disclaimer



- This presentation is solely for **educational purposes** and the matters presented herein do not constitute legal advice with respect to your particular situation
- The presentation does not constitute legal advice, or its application to the delivery of emergency health care services
- Attendees should consult with their own legal counsel and/or risk management for advice and guidance

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## Overview



- The Trouble with Transfers
- EMTALA Obligations of Behavioral Health Facilities
  - ✓ Do we have a Dedicated Emergency Department??
  - ✓ What about Accepting Hospital Obligations??
- AB 451: New Psychiatric Unit/Facility Emergency Service Requirements

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## California's Behavioral Health Crisis

Millions of Californians are not getting the care they need for mental health or substance use disorders.



About **two-thirds of adults** with a mental illness and **two-thirds of adolescents** with major depressive episodes lack treatment.

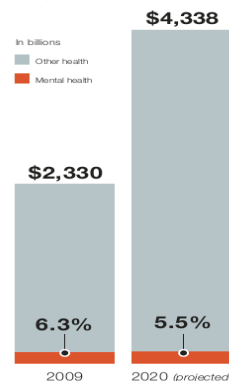
An estimated **1 in 5 adults** experiences a mental health condition in any given year.



The annual health care costs for people with a behavioral health condition are about **3.5 times higher** than the costs for people without such a condition.

### Funding hasn't kept pace

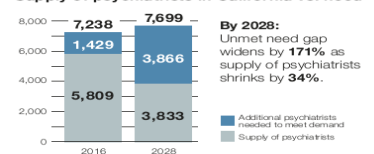
Nationally, the share of spending to care for mental health condition decreased from **6.3%** in 2009 to a projected **5.5%** in 2020.



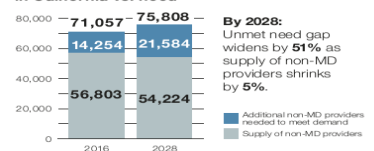
### Mental health professionals

California doesn't have enough providers to meet the state's needs. By 2028, the gap will be even wider.

#### Supply of psychiatrists in California vs. need



#### Supply of non-MD mental health providers in California vs. need



Source: Healthforce Center at UCSF California's Current and Future Behavioral Health Workforce, February 2018; Goffman, Bates, Geyn and Speltz.  
Note: "Non-MD Mental Health Providers" include psychologists, licensed marriage family therapists, licensed professional clinical counselors, and licensed clinical social workers.



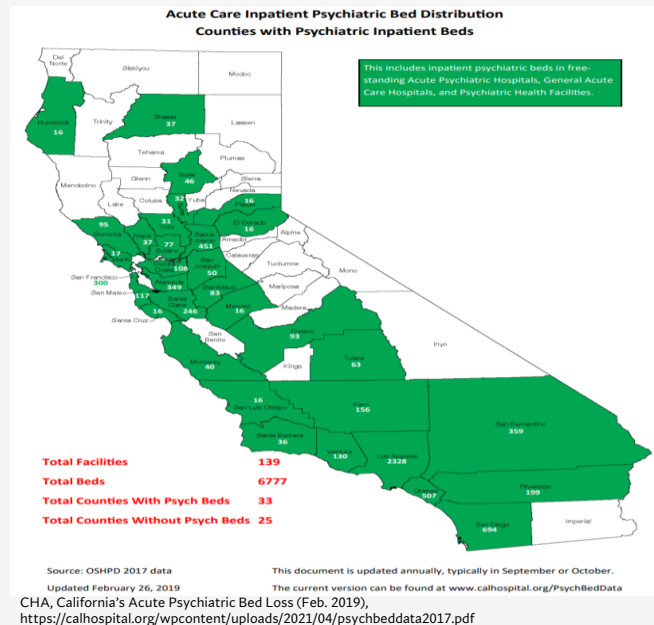
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## The Trouble with Transfers



- No LPS designated inpatient facility in ~40% of CA counties
- Limited beds available for specialty populations



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## The Trouble with Transfers



- CSUs and PHFs?
  - Restrictions on admissions, medical clearance, and service limitations
  - Generally, not subject to EMTALA unless Medicare certified
  - But new state rules for PHFs (AB 451)



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## The Trouble with Transfers



- EMTALA transfers subject to same rules whether medical or psychiatric EMC!
- Potential EMTALA Issues?
  - Adequate medical screening
  - Appropriate transfers
  - Failure to accept appropriate transfers
- Non-EMTALA transfers?

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## EMTALA Obligations of Behavioral Health Facilities

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## EMTALA Obligations of Behavioral Health Facilities



**An individual presents at the entrance to a behavioral health facility seeking immediate attention (may be medical or behavioral)...**

Does EMTALA apply?

- If *Yes* → what are the obligations of the facility?
- If *No* → what are the obligations of the facility?

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## Poll



**When would the behavioral health facility be subject to EMTALA obligations?**

1. When the facility provides emergency services;
2. When the facility is a Medicare-certified hospital, whether or not the hospital provides emergency services; or,
3. When the facility decides it wants to be subject to EMTALA.

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## EMTALA Obligations of Behavioral Health Facilities



### Full Coverage of EMTALA?

- Only if behavioral facility has a dedicated emergency department (“DED”)
- Having a DED is not dependent on state license

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### Dedicated Emergency Department

- **Licensed** as an emergency department;
- **Held out** to the public as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or
- **One-third of all walk-ins** received treatment for emergency conditions in the past calendar year



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## Dedicated Emergency Department?



- **Urgent Care Centers**
  - ✓ *Friedrich v. South County Hospital Healthcare System* (2016 D. Rhode Island)

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## Dedicated Emergency Department? (cont.)



- **Psychiatric Emergency Services (PES)/CSU**



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## So, you have a Dedicated Emergency Department...



### Core EMTALA Obligations –

- Medical screening examination
- Further examination and stabilizing treatment for a patient with an emergency condition
- On-call coverage
- Transfer/discharge of patients
- Acceptance of unstabilized ED patients requiring a higher level of care
- No delay of required services for insurance or payment reasons

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## If no Dedicated Emergency Department...



- Must still comply with:
  - ✓ The **Medicare conditions of participation** for hospitals without emergency rooms
  - ✓ **EMTALA accepting hospital obligations**

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## Medicare Obligations of Behavioral Health Facilities



### Medicare CoPs for hospitals without emergency services

#### **A-0093**

**(Rev. 37, Issued: 10-17-08; Effective/Implementation Date: 10-17-08)**

**§482.12(f)(2) If emergency services are not provided at the hospital, the governing body must assure that the medical staff has written policies and procedures for appraisal of emergencies, initial treatment, and referral when appropriate.**

#### **Interpretive Guidelines §482.12(f)(2)**

CMS, State Operations Manual, Appendix A – Survey Protocol, Regulations and Interpretative Guidelines for Hospitals, [https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_a\\_hospitals.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf)

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## Medicare Obligations of Behavioral Health Facilities



### Appraisal

- Hospital must ensure that an RN is immediately available as needed to provide care
  - ✓ Must be at least one RN qualified to conduct an assessment that enables him/her to recognize need for emergency care
- Physician, on-site or on-call, must provide appraisals or medical direction to on-site staff conducting an appraisal

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## Medicare Obligations of Behavioral Health Facilities (cont.)



### Initial Treatment

- Physician, on-site or on-call, can provide initial emergency treatment or medical direction to on-site staff to provide initial emergency treatment
- Expectation is that the hospital can evaluate the patient population in order to anticipate potential emergency scenarios and develop the policies, procedures and staffing that would enable it to provide safe and adequate initial treatment of an emergency

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## Medicare Obligations of Behavioral Health Facilities (cont.)



### Referral

- Must have medical staff policies and procedures to address scenarios when an individual's emergency needs exceeds hospital's capability
- **Discharge Planning (42 CFR § 482.43(d))**
  - ✓ Hospital must transfer to appropriate facilities that can treat patient's condition
  - ✓ Hospital must send necessary medical information to receiving hospital/facility

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## Medicare Obligations of Behavioral Health Facilities (cont.)



### Other obligations of Medicare Participation

- Physician On-Duty or On-Call AT ALL TIMES (42 CFR § 482.12(c)(3))
- Responsible Physician for Each Patient (42 CFR § 482.12(c)(4))
- RN Supervision and Availability at all times (42 CFR § 482.23(b))
  - ✓ RN must be immediately available to provide care when needed
- Right to Care in a Safe Setting (42 CFR § 482.13(c)(2))

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## EMTALA Accepting Hospital Obligation



- Applies to all hospitals, whether or not they provide emergency services
  - ✓ *Interpretative Guidelines* Tag A-2411/C-2411

### Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-19-15-EMTALA

DATE: July 02, 2019

TO: State Survey Agency Directors

FROM: Director  
Quality, Safety & Oversight Group

SUBJECT: Frequently Asked Questions on the Emergency Medical Treatment and Labor Act (EMTALA) and Psychiatric Hospitals

#### Memorandum Summary

- **EMTALA and Psychiatric Hospitals:** Medicare-participating psychiatric hospitals are required to comply with EMTALA requirements.
- **Frequently Asked Questions:** CMS is providing the attached Frequently Asked Questions document to address common inquiries from psychiatric hospitals regarding compliance with EMTALA.

#### Background

Medicare-participating hospitals, including psychiatric hospitals, are required to comply with EMTALA. The requirements are consistently applied in hospitals and critical access hospitals with emergency departments and labor and delivery departments. At times, however, there is confusion or misconceptions regarding EMTALA obligations in psychiatric hospitals.

The attached Frequently Asked Question document addresses common inquiries specific to EMTALA compliance in psychiatric hospitals. Intake or assessment areas in psychiatric hospitals may meet the threshold of "dedicated emergency department" as defined in the EMTALA regulations at §489.24(b) and be required to meet EMTALA screening and stabilization requirements. In addition, since psychiatric hospitals offer specialized services, they are required to meet the recipient hospital requirements at §489.24(f).

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO-19-15-EMTALA.pdf>

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## EMTALA Accepting Hospital Obligation (cont.)



- When does a hospital have to *accept* a transfer?

- When can a hospital *refuse* a transfer??



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## EMTALA Accepting Hospital Obligation (cont.)



### Ask the Right Questions....

- Is the patient an ED patient?
- Does the patient have an EMC?
- Is the EMC stabilized?
- What is the reason for the transfer? What are the patient's clinical needs?
- Does the sending hospital have the present capability/capacity?



**Document. Document. Document.**

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## EMTALA Accepting Hospital Obligation (cont.)



### Ask the Right Questions....

- Is an appropriate bed available?
- Is there appropriate staff?
- Is an attending physician available?
- Are the patient's needs within the scope of our admitting policies and capabilities?

**Document. Document. Document.**

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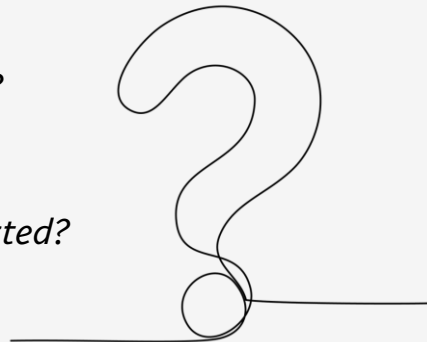
## EMTALA Accepting Hospital Obligation (cont.)



### Considerations for Receiving Hospital and Physician

Can I...

- *ask for pertinent clinical information?*
- *request copies of the patient record?*
- *talk with the transferring physician?*
- *ask if an on-call physician was contacted?*



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## Off-Limit Topics



- Patient Insurance
- Financial Status
- Anything related to money (e.g., preadmission deposit)



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## EMTALA Accepting Hospital Obligation



“...as a practical matter, any hospital with specialized capabilities and facilities that refuses a request to transfer an unstabilized patient risks violating ... [EMTALA]...to the extent it chooses to second-guess the medical judgment of the transferring hospital.”

– *St. Anthony Hospital v. DHHS*

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## EMTALA Accepting Hospital Obligation (cont.)



### Remember....

- The sending hospital may arrange an appropriate transfer to any accepting facility, within or outside of the county or state, that has the capacity and capability to stabilize the psychiatric EMC
- Absent an exception, a receiving facility cannot refuse acceptance of an appropriate transfer if it has the capacity and capability to stabilize the psychiatric EMC

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## AB 451 – Psychiatric Emergency Medical Conditions



- Covered receiving facilities must accept transfers of an individual with a **psychiatric emergency medical condition** from a health facility with an ED and provide **emergency services and care** if the following requirements are met:
  - ✓ Treating physician at the sending facility determines patient is **medically stable** and appropriate for treatment in psychiatric setting (and documents such determination in the records);
  - ✓ Facility has an open bed; and,
  - ✓ Facility has appropriate facilities and qualified personnel available to provide the services or care

### Covered Receiving Facilities:

- Psychiatric Units within GACH
- Psychiatric Health Facilities
  - ✓ > 16 beds
  - ✓ Not county owned and operated
- Acute Psychiatric Hospitals

*Does not include state hospitals*

Health & Safety Code 1317.4b

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## AB 451 – Psychiatric Emergency Medical Conditions (cont.)



Recipient facilities must provide care consistent with the following requirements:

- Cannot base care on, or let it be affected by, the person's ethnicity, citizenship, age, preexisting medical condition, insurance status, economic status, ability to pay for medical services, or any other protected characteristic, except to the extent that a circumstance such as age, sex, preexisting medical condition, or physical or mental disability is medically significant
- Emergency services and care shall be rendered without first questioning the patient or any other person as to his or her ability to pay therefor
- The facility shall not require a person who voluntarily seeks care to be in custody pursuant Welfare and Institutions Code 5150 (LPS) as a condition of accepting a transfer of that person

Health & Safety Code 1317.4b; 1317

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## AB 451 – Psychiatric Emergency Medical Conditions (cont.)



- What will the impact be?
  - ✓ GACHs/APHs
  - ✓ PHFs
- Penalties for non-compliance?



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## Resources to Find Designated Facilities



### **Lanterman-Petris-Short (LPS) Act Designated Facilities**

<https://www.dhcs.ca.gov/Documents/LPS-24hr.pdf>

<https://www.dhcs.ca.gov/Documents/LPS-Outpatient-CSU.pdf>

<https://www.dhcs.ca.gov/Documents/LPS-Otherfacilities.pdf>

### **Find a Mental Health Treatment Facility**

<https://www.dhcs.ca.gov/Documents/PsychiatricHealthFacility.pdf>

**WARNING:** No guarantees that webpages are available and up to date

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# Questions?



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# Thank You

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