EMTALA and EMS

California Hospital Association

Disclaimers

- 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.

Agenda

- **EMTALA Refresher**
  - CMS Quality, Safety & Education Portal (QSEP) – https://qsep.cms.gov
- **EMTALA Updates and Hot Spots**
  - Medical screening exams
  - Acceptance of transfers
  - Obstetric patients in the ED and labor and delivery
  - Patient safety and monitoring, security, elopement
  - Interaction of EMS agency policies and EMTALA obligations
- **Q&A**

EMTALA Refresher

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EMTALA 101 — The Basics!

- When does EMTALA begin?
- What is an appropriate medical screening examination (MSE)?
- What is an emergency medical condition (EMC)?
- What stabilizing treatment is required?
- What is “stabilized?”
- What is an appropriate transfer?
- When must a hospital accept a transfer?

When Does EMTALA Begin?

Four Paths to EMTALA

- Individual presents to “dedicated emergency department” (e.g., ED/OB) seeking or in need of examination or treatment for a **medical** condition
- Individual presents elsewhere on hospital property seeking or in need of examination or treatment for potential **emergency** condition
- Individual in a hospital-owned/operated ambulance that is not operating under emergency medical services (EMS) direction
- Individual in a non-hospital owned/operated ambulance on hospital property

EMTALA — Core Obligations

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

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What is an Appropriate MSE?

CMS — “An MSE is the process to reach, within reasonable clinical confidence, the point at which it can be determined whether the individual has an EMC or not.”

- Triage is not an MSE
- Designation of qualified staff to perform MSEs
- Consistency/non-discriminatory
- Documentation

What is an EMC?

- Medical condition (including severe pain, psychiatric disturbances or chemical dependency abuse) manifesting itself by acute symptoms of sufficient severity so that the absence of immediate medical attention could reasonably be expected to result in —
  - » Placing the health of the patient (or an unborn child) in serious jeopardy; or
  - » Serious impairment of bodily functions; or
  - » Serious dysfunction of any bodily organ or part
- A pregnant individual having contractions if there is inadequate time for a safe transfer to another facility or the transfer will pose a threat to the health of the individual or the unborn child

Further Examination and Stabilizing Treatment

If an emergency medical condition exists –

- Must provide further examination and stabilizing treatment within the capability and resources of the hospital, including on-call coverage and response
- Further examination and treatment is subject to a patient's right to make an informed refusal of care

Stabilization of an EMC

When is an emergency condition **stabilized**?

- When no material deterioration is likely, within reasonable medical probability, to result from or occur during the transfer of the patient to another medical facility (or individual having contractions has delivered the baby/placenta)
  - **Interpretive Guidelines**: an emergency condition is not stabilized until the condition, within reasonable medical confidence, is "**resolved**"
  - **WARNING** — "stabilized" and "stable" have different meanings

Inpatients

- EMTALA obligations are terminated when an individual is admitted for inpatient care
  - "Inpatient" is "a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services"
  - Inpatient status includes admitted patients who are "boarded" in the ED waiting for a bed

What is an “Appropriate” Transfer?

A transferring hospital must meet the following standards for making an “appropriate” transfer under EMTALA:

- Patient has an EMC that is not stabilized, and the resources needed to do so are not available at the treating hospital
- The sending physician certifies that the clinical benefits of the transfer outweigh the risks, **or** the patient has made informed request for the transfer
- A receiving hospital has accepted the transfer
- Medical records are sent to the receiving facility
- An appropriate level of transport (including personnel and equipment) is selected

When Must a Hospital Accept a Transfer?

A hospital is required to **accept** an "appropriate" transfer from a transferring hospital if all of the following exist:

- The patient presented to the sending hospital seeking or in need of emergency care and treatment
- The patient has an EMC that is not stabilized
- The sending physician has determined that the patient requires further examination and treatment in order to stabilize the EMC
- At the time of transfer, the sending hospital does not have the capability/capacity to stabilize the EMC
- The receiving hospital has the capability and capacity to stabilize the patient's EMC

Do Not Forget…

EMTALA applies only to emergency patients who have an EMC that is not stabilized.

- Inpatient transfers are not covered by EMTALA!
- An emergency patient with a stabilized EMC, as determined by the sending physician, is not covered by EMTALA
  - » There are federal and state laws regarding approval for post-stabilization services

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EMTALA Updates & Hot Spots

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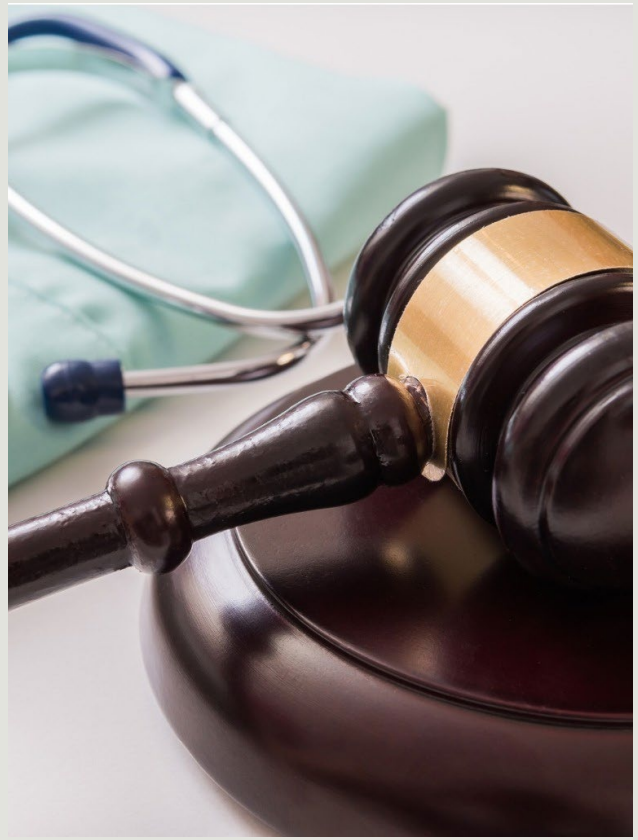
EMTALA Sanctions

- Civil money penalties against hospitals and physicians
- Potential exclusion of hospital or physician from the Medicare and Medicaid programs
- Effective in 2023:
  - » Up to $129,333 per violation -- hospitals (100+ beds) and physicians (up to $64,618 for hospitals <100 beds)
  - » Amounts are adjusted annually for inflation



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- Medical screening exams
- Acceptance of transfers
- Obstetric patients in the ED and labor and delivery
- Patient safety and monitoring, security, elopement
- Interaction of EMS agency policies and EMTALA obligations

Medical Screening Examination

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Medical Screening Exams

Core requirements – recap

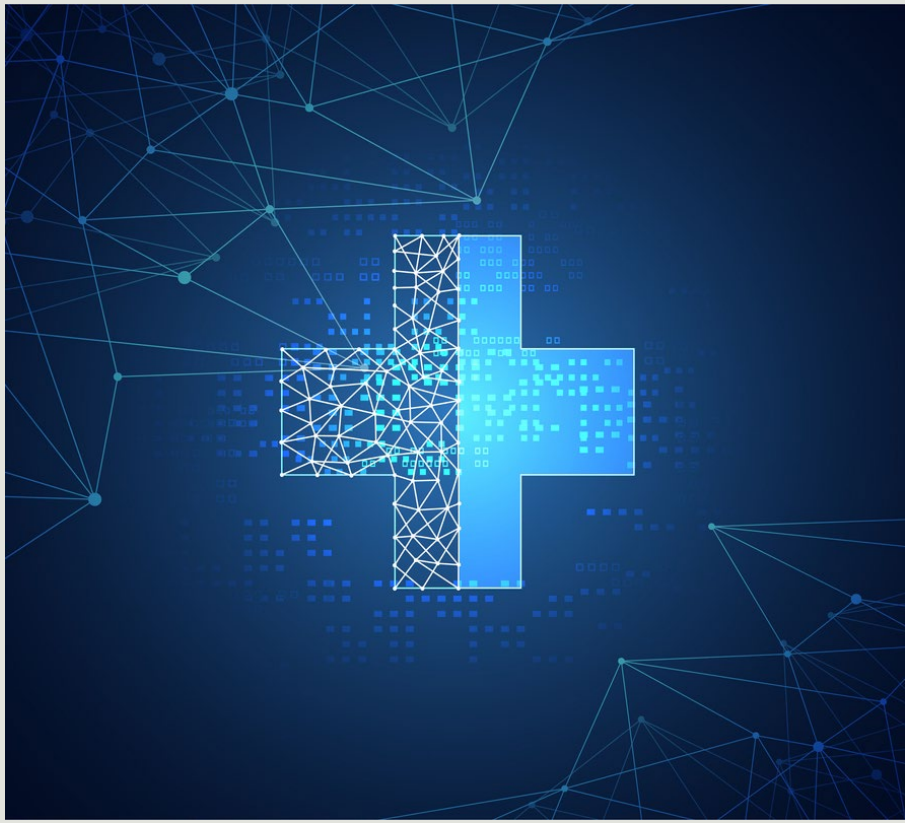
- The MSE is intended to determine, within reasonable clinical confidence, the presence or absence of an EMC
- The MSE must be performed by *qualified medical personnel* designated by the hospital
- Triage is not medical screening
- Must be provided in non-discriminatory manner to all patients presenting with same/similar signs and symptoms

Medical Screening Exams

Last three years, failure to provide an appropriate MSE cited by CMS in 75% of enforcement actions.

Important issues:

- Appropriate scope of MSE?
- Use of resources are available to ED?
- Where to perform?
- Labor and Delivery patients?
- Psychiatric patients?



Acceptance of EMTALA Transfer

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Acceptance of EMTALA Transfer

- An ED patient with an EMC that is not stabilized?
  - » Whose judgment prevails?
- What is your process for a transfer request?
- How are transfer requests documented?
- How are disputes handled in real time?
- ***EMTALA Manual Appendix T*** – transfer checklist and script – step-by-step process to evaluate requests

Saying No…

- Transfer acceptance obligation does not apply to –
  - Emergency patients whose EMC are stabilized
    - **Note**: sending physician's judgment prevails
  - Inpatients
  - Sending or accepting facility is not a Medicare-certified hospital
- *Exception*: does the hospital or physician have a contractual or other legal obligation to accept the patient

Psychiatric Patients

- No distinction under EMTALA rules
- EMTALA regulations expressly permit an appropriate transfer to ***any*** facility that has capacity and capability to stabilize the individual's EMC
- And a receiving hospital cannot refuse an appropriate transfer if it has the capacity and capability to stabilize the individual's EMC

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Irrelevant to EMTALA Transfer

- No inquiry as to patient insurance/financial status until after patient is accepted
- Anything related to money or payment
- Obligations of the transferring hospital or physician that are not required (e.g., requests to perform additional tests the transfer before acceptance)
- Conditions unrelated to the transfer
- Any other information that is not pertinent to the clinical needs of the patient

EMTALA Transfer Risks

- Risk if there is a delay in the response to accept/refuse a transfer
- If a dispute between hospitals or physicians as to the clinical status of the patient or need for a transfer, the judgment of the sending physician will generally prevail
  - Best to handle disputes **AFTER** the transfer has occurred

EMTALA and OB Patients

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OB Patients – MSE

- The screening for persons in labor requires documentation of the initial assessment of both the expectant mother and unborn child
- Screening should include “ongoing evaluation of fetal heart tones, regularity and duration of uterine contractions, fetal position and station, cervical dilation, and status of membranes…”
- Further screening if patient is not in labor and presenting complaint is not addressed by OB personnel
- The Guidelines do not differentiate between MSE in L&D and in the ED (without L&D on-site)

OB Patients – Documentation

Examples of EMTALA violations –

- L&D personnel – exceed or fail to follow standardized procedures or to recertify competencies as required
- Charts that do not include physician orders for care or discharge
- Charts in which the examining OB physician did not chart his/her visit or findings
- Chart in which discussions with and orders from supervising physicians are/were inadequate or not documented

2024 EMERGENCY SERVICES FORUM

NEWPORT BEACH

Patient Safety and Monitoring, Security and Elopement

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Elopement or Refusal

- Before the MSE?
  - Issue with wait times?
  - Financial reasons?
  - Need adequate documentation
- After the MSE?
  - Inform of risks and benefits of refusing further examination and treatment
  - Again, need adequate documentation!

Monitoring Patients

CMS 2567 — "… the facility ***failed to ensure*** that two…patients who presented to the…ED… with psychiatric diagnoses (including suicidal and homicidal ideations or an altered level of consciousness) ***received ongoing assessments and monitoring to ensure stabilization of an emergent condition***…These failures resulted in the potential for the undetected deterioration of an emergency medical condition which would place patients at risk for harm, including elopement."

OIG Settlement — "[the facility failed] to provide further medical examination and treatment to patient…who was brought to [the ED] for psychiatric assessment. The psychiatrist who performed [patient's] medical screening examination determined that [the patient] had an elevated risk of harm to himself and others….ordered that [patient] be monitored and observed every 15 minutes while in crisis …. ***The ED staff failed to perform the ordered safety observations and [patient] was found dead in his room approximately 2.5 hours after the last safety check."***

Interaction of EMS Agency Policies & EMTALA Obligations

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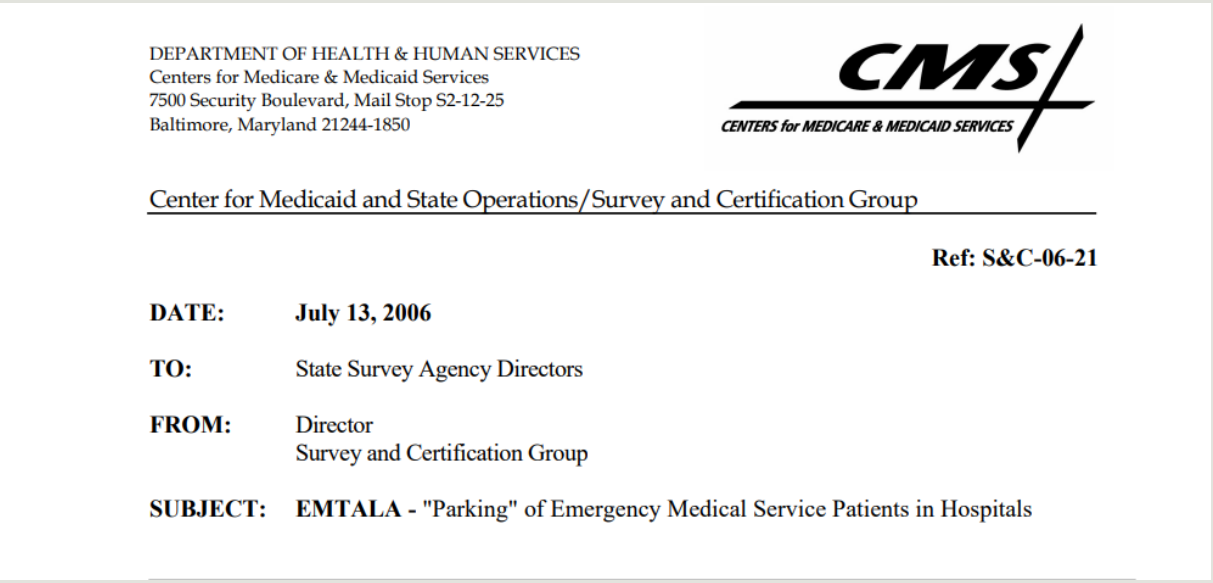
EMTALA and EMS

- Hospital-owned vs. Nonhospital-owned ambulances
  - Impact of community-wide EMS protocols?
- Diversion enroute to the trauma hospital: the hospital must –
  - Perform an MSE
  - Determine whether it has the capability to stabilize an EMC
  - Make an EMTALA appropriate transfer
- EMTALA does not apply if an ambulance is on hospital property to access a helipad, **IF** no request for examination or treatment

Ambulance Patient Offload Time (APOT)



DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-12-25
Baltimore, Maryland 21244-1850

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Center for Medicaid and State Operations/Survey and Certification Group

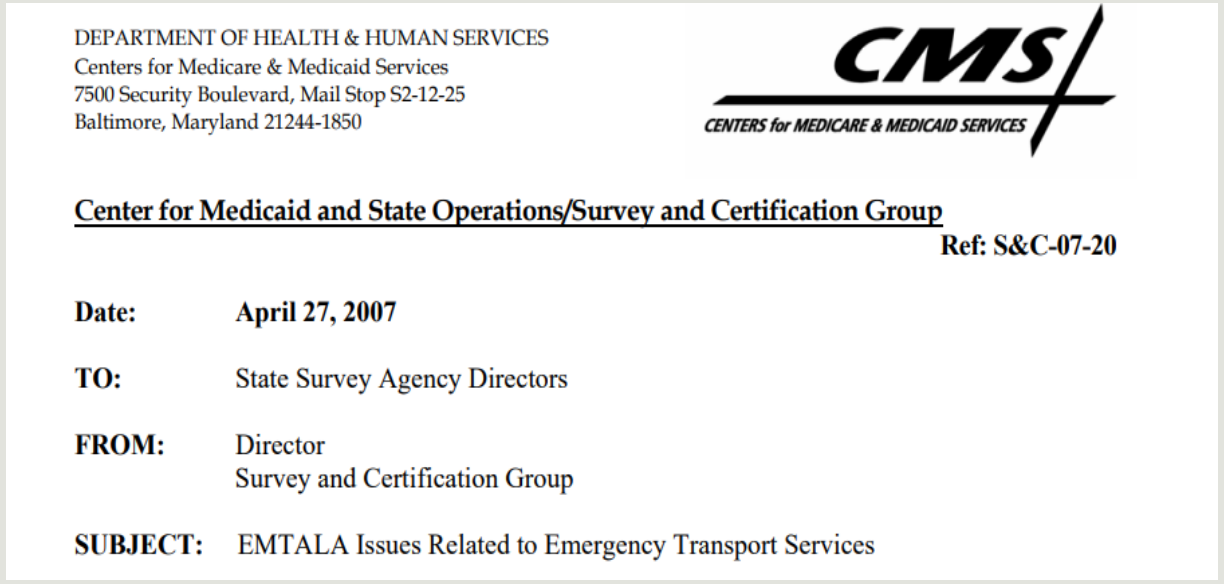
Ref: S&C-06-21

DATE: **July 13, 2006**

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: **EMTALA -** "Parking" of Emergency Medical Service Patients in Hospitals



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7500 Security Boulevard, Mail Stop S2-12-25
Baltimore, Maryland 21244-1850

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-07-20

Date: **April 27, 2007**

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: EMTALA Issues Related to Emergency Transport Services

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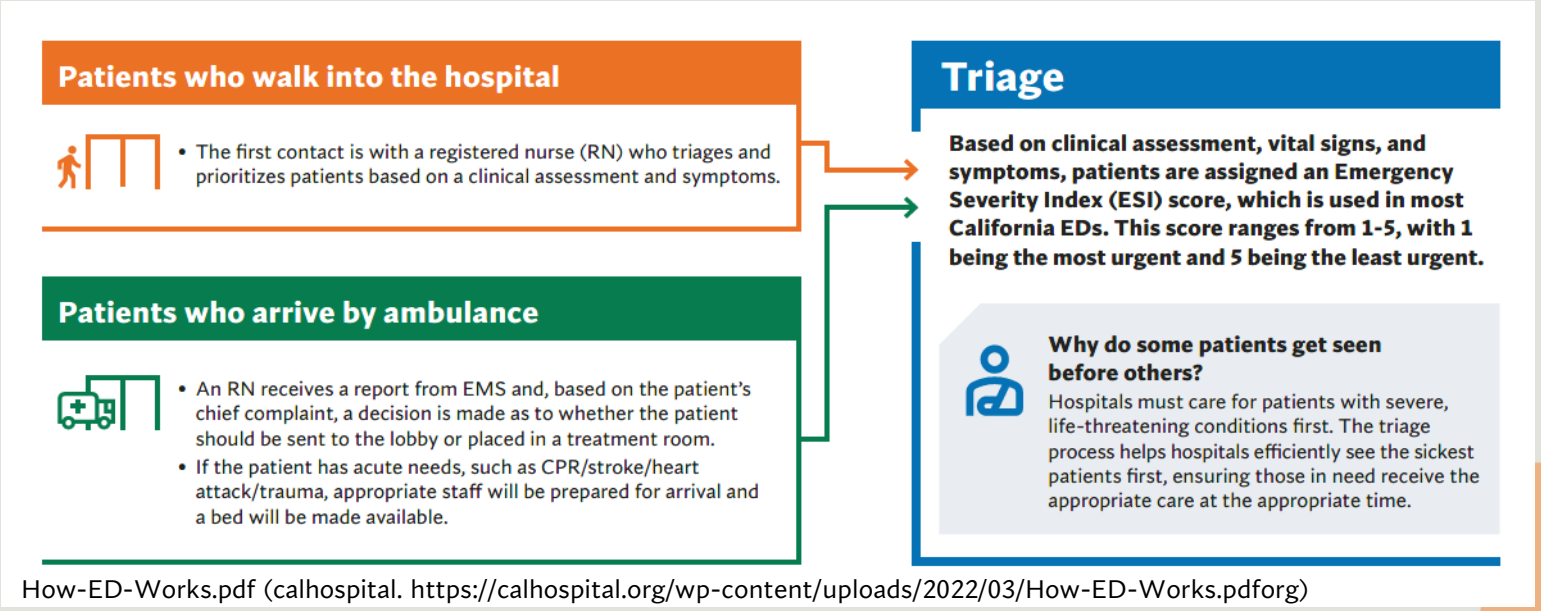
EMTALA and APOT

- Remember –
  - Hospital's EMTALA obligations begin as soon as a patient "presents" at a hospital's dedicated ED, or on hospital property.
- Other CoPs? 42 CFR 482.55
- Documentation is important!



How-ED-Works.pdf (calhospital. https://calhospital.org/wp-content/uploads/2022/03/How-ED-Works.pdforg)

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Recent 2567s & OIG Settlements

Examples –

- Turning EMS away
- Failure to provide triage, medical screening examination, and any stabilizing treatment

Department of Health & Human Services
Centers for Medicare & Medicaid Services

Form Approved
OMB No. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION (CMS-2567)

U.S. Department of Health and Human Services
Office of Inspector General

California Hospital Association

Questions?

Thank You

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