2025 | EMERGENCY SERVICES FORUM | NEWPORT BEACH

Updates and Implications for EMTALA and EMS

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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 health care services.
- Attendees should consult with their own legal counsel and/or risk management for advice and guidance.

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Agenda

EMTALA

- Old law, new dilemmas amid new responsibilities for hospitals
- AB 1316 – requiring Medi-Cal managed care plans to pay for beneficiaries experiencing a mental health crisis

The LPS Act ** UPDATES **

- Quick overview
- Due process protections
- County-by-county implementation of new definition of "gravely disabled"
- Designation basics (professionals and facilities)
- SB 929 – *Phase III* of data collection requirements

Speaker last name - 3

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EMTALA Refresher

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EMTALA Core 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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Application of EMTALA Rules to Psychiatric Patients

Basic Principles:

- CMS considers medical and psychiatric EMCs to be co-equal
- EMTALA rules and guidance do not address involuntary holds

"Hospitals are not relieved of their EMTALA obligation to screen, provide stabilizing treatment, and/or an appropriate transfer to individuals because of prearranged community or state plans that have designated specific hospitals to care for selected individuals (e.g., Medicaid patients, psychiatric patients, pregnant women)."

- Int. Guidelines, Tag A-2406/C-2406

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- Medical screening exams
- Acceptance of transfers
- Patient safety and monitoring, security, elopement

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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

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Medical Screening Exams (cont.)

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?

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Psychiatric Emergency Medical Condition v. 5150 Hold

- A 5150 hold is based on **probable cause** by a peace officer or a county-authorized professional as a legal mechanism to take a person involuntarily to a designated facility for an assessment of a behavioral health condition
- Psychiatric Emergency Medical Condition (EMC) is based on a **clinical judgment** of an ED physician or other qualified professional designated by the hospital medical staff

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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!

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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.***"

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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

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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

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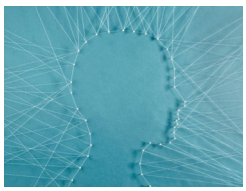
Acceptance of Transfers & Psychiatric Patients

- 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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AB 1316 – Psychiatric Emergency Medical Conditions

- Clarifies that psychiatric emergency medical conditions do **not** depend on whether patient is *involuntary* or *voluntary*
- Requires that Medi-Cal managed care plans pay hospital emergency departments for serving Medi-Cal beneficiaries experiencing a mental health crisis.
- Does not permit transfers that conflict with LPS Act or EMTALA

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Updates Regarding the LPS Act

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Legislative Intent of the LPS (Lanterman-Petris-Short) Act

1. To end inappropriate, indefinite, and involuntary commitment
2. To provide prompt evaluation and treatment
3. To guarantee and protect public safety
4. To safeguard individual rights through judicial review
5. To provide individualized treatment, supervision, and placement

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Legislative Intent of the LPS (Lanterman-Petris-Short) Act (cont.)

6. To encourage full use of existing agencies, professional personnel, and public funds to accomplish these objectives, and to prevent duplication of services
7. To protect persons with mental health disorders and developmental disabilities from criminal acts
8. To provide consistent standards for protection of personal rights of persons receiving services
9. To provide services in the least restrictive settings appropriate to the needs of each person

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Criteria to Detain

1. Danger to Self
2. Danger to Others
3. Grave Disability

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Burden of Proof for Grave Disability / Probable Cause

- To constitute probable cause to detain a person pursuant to section 5150, a state of facts must be known to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled. In justifying the particular intrusion, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion.
- *People v. Triplett* (1983)

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New Due Process Protections and Roll Out of "Gravely Disabled" Definition

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The LPS Act vs. Reality

STEP 1: 5150 – "hold and transport" (to designated LPS facility)

Medical clearance
Placement
Arranging safe transfer

STEP 2: 5151 – "assess and admit" (for evaluation & treatment, if least restrictive alternative)

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AB 2275 – the 5150 clock and due process

- **72-hour clock starts when the custodial hold is placed at WIC §5150**
  - §5151 specifically notes the start time from when detention first begins at §5150
- **New due process rights begin:**
  - when the clock "strikes" 72 hours, and
  - the patient still meets criteria, and
  - is unwilling to receive voluntary services, and
  - has not been certified for intensive treatment

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AB 2275 – the 5150 clock and due process (cont.)

New due process rights at 72 hours include:

- Notification of Patients' Rights Advocate
- Notification of individual designated by county to provide information to patient
- Scheduling of hearing to occur before end of Day 7
- Provision of assistance (attorney, PRA) to patient in preparing for hearing

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SB 43 and Involuntary Holds

(h) (1) For purposes of Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200), *Article 3 (commencing with Section 5225),* and Article 4 (commencing with Section 5250) of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350), "gravely disabled" means ~~either~~ *any* of the ~~following:~~ *following, as applicable:*

(A) A condition in which a person, as a result of a mental health disorder, *a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder,* is unable to provide for ~~his or her~~ *their* basic personal needs for food, clothing, ~~or shelter.~~ *shelter, personal safety, or necessary medical care.*

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New Definitions

- "**Severe substance use disorder**" means a diagnosed substance-related disorder that meets the diagnostic criteria of "severe" as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders
- This is six or more of the eleven symptoms listed in the substance-related disorder criteria

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New Definitions (cont.)

- "**Personal safety**" means the ability of one to survive safely in the community without involuntary detention or treatment pursuant to this part
- "**Necessary medical care**" means care that a licensed health care practitioner, while operating within the scope of their practice, determines to be necessary to prevent serious deterioration of an existing physical medical condition which, if left untreated, is likely to result in serious bodily injury as defined in section 15610.67

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What Will the New Definition Apply to?

- **5150** or 72-hour detention
- **5256 (b)** or new probable cause hearings that occur when someone is detained pursuant to 5150, beyond 72 hours (AB-2275)
- **5250** or 14-day hold
- **5270.15 or 5270.70** (30-day hold for grave disability only) and a second 30-day hold (grave disability only)
- **5350** or LPS Conservatorship
- **1799.111** of the Health and Safety Code (24-Hour Immunity for Detention at Non-LPS Facilities)

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Minors?

- Under age 18, not emancipated
- "Gravely disabled minor" is defined as –
  - » a minor who, as a result of a mental disorder, is unable to use the elements of life that are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others. Intellectual disability, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder.
- However, any minor held beyond 72 hours shall be pursuant to the LPS Act.

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Designation Basics

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Designated Professionals

Designated professionals include:

- Peace officer
- Professional person in charge of a designated facility
- Member of the attending staff of a designated facility
- Designated members of a mobile crisis team
- Professional person designated by the county

Welf. & Instit. Code § 5150(a)

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AB 416 (*pending*) – Emergency Physicians

- Current draft would add "emergency physicians" to list of designated professionals
- Emergency physicians must –
  - provide medical screening and treatment of patients in ED of hospital,
  - complete county training, and
  - complete application and approval process

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SB 1238 – Designated Facilities

- Expands **range of facilities that can treat individual with severe substance use disorder**
  - Authorizes counties to designate appropriate facilities, subject to DHCS requirements, for one or more services, including evaluation and treatment and intensive treatment
  - DHCS to approve county designation of facilities
- DHCS, in consultation with stakeholders, will issue **updated regulations regarding designation requirements**
- DHCS will issue **guidance regarding Medi-Cal reimbursement** for covered services provided to individuals with severe substance use disorder

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Designated Facilities

"*Designated facility*," "*facility designated by the county for evaluation and treatment*," or "*facility designated by the county to provide intensive treatment*" means a facility that meets designation requirements established by DHCS, including, but not limited to:

- Psychiatric health facilities licensed by DHCS
- Psychiatric residential treatment facilities licensed by the DHCS
- Mental health rehabilitation centers licensed by DHCS
- Provider sites certified by DHCS or a mental health plan to provide crisis stabilization
- General acute care hospitals
- Acute psychiatric hospitals
- Chemical dependency recovery hospitals
- Hospitals operated by the U.S. Department of Veterans Affairs

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Designated Facilities (cont.)

A county may designate a facility for the purpose of providing one or more of the following services:

- Providing evaluation and treatment pursuant to Section 5150, *et seq*.
- Providing intensive treatment pursuant to Section 5250, *et seq*.
- Providing additional intensive treatment pursuant to Section 5260, *et seq*.
- Providing additional intensive treatment pursuant to Section 5270.10, *et seq*.
- Providing post-certification treatment pursuant to Section 5300, *et seq*.

A county may designate a facility, as is appropriate and based on capability, for the purpose of providing one or more types of treatment listed above without designating the facility to provide all treatments.

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The LPS Act:
Data Collection Requirements

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SB 929 – Data Collection

BHIN 23-015 – April 2023
- Phase I of data collection
  - » Items 1, 2, 3, and 4

BHIN 23-013 – March 2024
- Phase II of data collection

BHIN 24-043 – December 2024
- Phase III of data collection (includes FAQs)

DHCS
CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES
Michelle Baass | Director

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LPS Designated and Approved Facilities

WIC §5402(a) (amended) – current data being collected:
- (1) Number of persons in designated and approved facilities
  - admitted or detained for 72-hour evaluation and treatment,
  - admitted for 14-day and 30-day periods of intensive treatment, and
  - admitted for 180-day post-certification intensive treatment in each county
- (18) And, for each person above, whether they were admitted or detained for:
  - Danger to self
  - Danger to others
  - Grave disability due to a mental health disorder
  - Grave disability due to a severe substance use disorder
  - Grave disability due to a mental health disorder and a severe substance use disorder

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LPS Designated and Approved Facilities (cont.)

WIC §5402(a) (amended) – current data being collected:

- (2) Number of persons transferred to mental health facilities pursuant to section 4011.6 of the Penal Code.
- (3) Number of persons for whom temporary conservatorships are established.
- (4) Number of persons for whom conservatorships are established.
- (5) Number of persons
  - admitted or detained for 72-hour evaluation and treatment, 14-day and 30-day periods of intensive treatment, or 180-day post-certification intensive treatment *either once, between two and five times, between six and eight times, and greater than eight times.*
- (10) Demographic information including
- (11) Number of county contracted beds.

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LPS Designated and Approved Facilities (cont.)

WIC §5402(a) (amended) – current data being collected:

- (7) Number of services provided or offered to individuals
  - admitted or detained for 72-hour evaluation and treatment,
  - admitted for 14-day and 30-day periods of intensive treatment, and
  - admitted for 180-day post-certification intensive treatment in each county
  - transferred to mental health facilities pursuant to Penal Code § 4011.6,
  - on temporary LPS conservatorships, and
  - on LPS conservatorships.

Services include assessment, evaluation, crisis intervention, medication treatment, psychiatric and psychological treatment services, as well as payer information or funding used to pay for services.

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"Other Entity" Data Reporting

Phase III Data Requirements Attachment C

Terminology	Definition
Designated and Approved Facility	For the purposes of W&I Code Section 5402, "designated and approved facility" or "facility designated by the county for evaluation and treatment" means a facility that is designated by a county board of supervisors to provide assessment, evaluation, crisis intervention, and treatment under the LPS Act (W&I Code § 5000, et seq.) or the Children's Civil Commitment and Mental Health Treatment Act (W&I Code § 5585, et seq.) and approved by the Department pursuant to Section 821 of Title 9 of the California Code of Regulations.
Other Entity	For the purposes of W&I Code Section 5402, "each other entity involved in implementing Section 5150" means any facility, entity, or person not included as a designated facility that is involved in implementing W&I Code Section 5150. Other entities involved in implementing W&I Code Section 5150 include, but are not limited to: (a) Peace officers, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code. (b) Professional persons designated by a county behavioral health director pursuant to W&I Code Section 5121 to perform functions under section 5150, including, but not limited to, members of ~~mobile~~ crisis teams. (c) Hospital emergency rooms/departments.

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Other Entities

WIC §5402(a) (amended) – current data being collected:

- (1), (18) Number of persons admitted or detained for 72-hour hour evaluation and treatment for:
  - Danger to self
  - Danger to others
  - Grave disability due to a mental health disorder
  - Grave disability due to a severe substance use disorder
  - Grave disability due to a mental health disorder and a severe substance use disorder
- (2) Number of persons transferred to mental health facilities pursuant to section 4011.6 of the Penal Code.
- (5) Number of persons detained or admitted for 72-hour evaluation and treatment either once, between two and five times, between six and eight times, and greater than either times.
- (10) Demographic information.
- (11) Number of country contracted beds.

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Other Entities

WIC §5402(a) (amended) – current data being collected:

- (7) Number of services provided or offered to individuals admitted or detained for 72-hour evaluation and treatment

Services include assessment, evaluation, crisis intervention, medication treatment, psychiatric and psychological treatment services, as well as payer information or funding used to pay for services.

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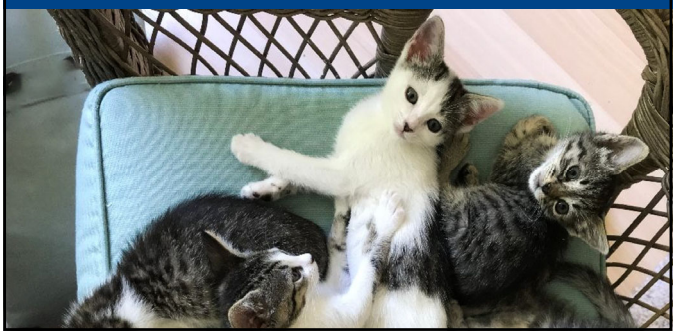
Questions?



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Thank you

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