Do It Yourself
EMTALA Auditing
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Seattle—the hype:
LEARNING OBJECTIVES

- Understand the background and basics of EMTALA
- Learn how to prepare, conduct and report EMTALA audits
- Develop an auditing checklist
- Foster relationships with key leaders
- Focus on the right messages
- Plan for follow up audits
### DISCLAIMERS, HOUSEKEEPING

- I’m not an attorney, but I was a primary EMTALA contact at a four-hospital system from 2004 - 2015
- EMTALA Case Law notwithstanding, there is current debate at CMS about whether EMTALA survives IP admission
- Duty to report—only applies to patients who came from another hospital
- ED Wait Time Clocks—not such a good idea

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### EMTALA—the law

![SORRY IT’S THE LAW]
EMTALA—The Law

- EMTALA—The Emergency Medical Treatment and Active Labor Act
- Part of COBRA, originally passed in 1986 in response to concerns of “patient dumping”
- Enforced by CMS and OIG
  - CMS can terminate the Hospital’s Medicare agreement
  - The OIG has exclusion authority
  - Civil Monetary Penalties (CMP) on both the hospital and a “responsible physician” up to $50,000 per violation
  - Patients may bring civil lawsuits for damages
- Very specific meanings/definitions
- Requires 68-page State Operations Manual to interpret

EMTALA APPLIES TO:

- Participating Medicare Hospitals
  - Hospitals with Emergency Departments
  - Hospital-owned ground or air ambulance services
  - Certain Provider-based Urgent Care Centers

* A dedicated emergency department is defined as meeting one of the following criteria regardless of whether it is located on or off the main hospital campus:

- The entity (1) is licensed by the State in which it is located under applicable State law as an emergency room or emergency department; or
- The entity is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions (EMC) on an urgent basis without requiring a previously scheduled appointment; or
- During the preceding calendar year (or the year immediately preceding the calendar year in which a determination under this section is being made), based on a representative sample of patient visits that occurred during the calendar year, it provides at least one-third of all of its visits for the treatment of EMCs on an urgent basis without requiring a previously scheduled appointment.
EMTALA—the basics:

• A person who “comes to the emergency department” for examination or treatment for a medical condition must receive a “medical screening examination” to determine whether an “emergency medical condition” exists.

• If there is an emergency medical condition, the hospital must provide either
  • Further medical examination and treatment to “stabilize” the medical condition, or an
  • “Appropriate transfer”

Getting Your Audit Organized

Define your audit’s purpose and scope
✓ By-laws
✓ Policies and Procedures
✓ On-Call List
✓ Training Materials
✓ ED, Urgent Care, L&D
✓ EHR—number of records
✓ Workflow
✓ Signage
✓ Scripting
### Getting Your Audit Organized

#### Coordinate with Leadership
- Compliance
- Hospital Administration
- HIM
- ED
- Medical Staff
- Patient Access/Registration
- Risk Management
- Others?

#### Set Expectations
- Introductory meeting or e-mail
- Establish connection through the relationship
- Explain the audit process
- Lay the groundwork for follow-up audits
  - Part of an ongoing, regular review and tune-up
- Frequency
- Duration
- Thank them for the opportunity
Getting Your Audit Organized

Obtain copies of:
- EMTALA policies and procedures
- Medical Staff By-Laws
- On-Call policy/procedures & on-call list
- ED Transfer form
- Transfer policies
- Registration scripting
- Staff EMTALA Training Materials

Getting Your Audit Organized

Get access (user ID and password, and any training needed) to all pertinent systems
- EHR
- ED-specific system(s)

Arrange meeting with ED Nurse Manager/Director
Getting Your Audit Organized

Request data—import into your own auditing xls
• Patient name, DOB, MRN
• Patient encounter ID
• Patient status
• Reason for transfer
• Destination facility
• Mode of transportation
• Disposition
• Any other fields that will help…

Sample Auditing XLS

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>I</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>PatientID</td>
<td>Patient</td>
<td>Checked in</td>
<td>Triaged</td>
<td>Stabilizing Treatment</td>
<td>Discharge Status</td>
<td>Transfer Form that contains patient status on transfer</td>
<td>Patient Consent</td>
</tr>
<tr>
<td></td>
<td>Name</td>
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<td></td>
<td>Physician Certification</td>
<td>Type of Transportation used to transfer the patient</td>
<td>Destination Facility</td>
<td>Reason for Transfer</td>
<td>Name and Title of individual accepting patient at other facility</td>
<td>Medical Records sent to other Facility</td>
<td>Notes</td>
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## Sample Audit Checklist

### Getting Your Audit Organized

### EMTALA Compliance Checklist

#### Entrance and Signage
1. Identify all entrances to the Emergency Department that can be used for patient presenting for treatment.
2. Ask patients if they have information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
3. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
4. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
5. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.

#### Stage
6. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
7. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
8. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
9. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.

#### Registration
10. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
11. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
12. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
13. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.

#### Medical Screening Examination
14. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
15. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
16. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.
17. Ask patients if they were given specific information about the patient’s sign on the Medical Screening Questionnaire does not indicate a life-threatening condition.

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### EMTALA Compliance Checklist

#### Stabilizing Treatment
1. A physician if necessary for the capability of the facility and staff.
2. Confirm that all methods of stabilizing the patient when trained and in compliance with physician orders and/or as ordered by the facility.
3. Is there evidence of the physician’s orders and/or as ordered by the facility.

#### Transfers Out
1. Audit transfer policy procedures to confirm that transfers of individuals with medical conditions are coordinated with the receiving facility and that all necessary documentation is provided.
2. Confirm that all methods of stabilizing the patient when trained and in compliance with physician orders and/or as ordered by the facility.
3. Unless the receiving facility’s orders are not in compliance with physician orders and/or as ordered by the facility.
4. Unless the receiving facility’s orders are not in compliance with physician orders and/or as ordered by the facility.

#### Transfers In
1. Confirm that the facility established a transfer request to capture the following information regarding transfer requests: facility;
2. Name of facility requesting transfer;
3. Requested services (e.g., special care, isolation, monitoring, etc.);
4. Whether transfer accepted or denied;
5. If applicable, reason for denial.
Getting Your Audit Organized

Sample Audit Checklist

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EMTALA Compliance Checklist

<table>
<thead>
<tr>
<th>Documentation Review</th>
</tr>
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<tbody>
<tr>
<td>Audit/central log for disposition and compliance with additional state law requirements (e.g., documentation of chief complaint, time of arrival and time of disposition).</td>
</tr>
<tr>
<td>Review/analyse (or Rule 1) and finally (or Rule 1) to confirm that the required information such as the EMTALA policy and procedures have been identified.</td>
</tr>
<tr>
<td>Review physician’s on-call list to verify that it reflects the coverage of services available to inpatients. Physicians must be named rather than listed by name rather than using only a group.</td>
</tr>
<tr>
<td>Does on-call list include any updates for substitutions?</td>
</tr>
<tr>
<td>Review triage and assessment policy.</td>
</tr>
<tr>
<td>Confirm that EMTALA has been updated to reflect regulatory changes and interpretive guidance changes, for example:</td>
</tr>
<tr>
<td>1. Definition of “careless of the emergency department.”</td>
</tr>
<tr>
<td>2. Definition of “traveled emergency department.”</td>
</tr>
<tr>
<td>3. Concept of “prudent observer.”</td>
</tr>
<tr>
<td>4. Changes in obligations for non-ED off-campus departments</td>
</tr>
<tr>
<td>5. Deviation of EMTALA obligations upon inpatient admission, and</td>
</tr>
<tr>
<td>6. Requirement that back-up arrangements for on-call coverage be documented in policies.</td>
</tr>
</tbody>
</table>

Best Practices

Does the hospital avoid “No Wait Time Under” types of advertising?

Does ED log contain name, date, time, and disposition? Does it answer the question “why are patients leaving without being seen?”

Does ED round regularly to ED waiting areas/lobbies?

Does hospital participate in a Community Call Plan agreement with other hospitals? Is this agreement shared with CMS?

The Audit--Policies

EMTALA Policy Review

• To whom does it apply?
• When was it last updated?
• Review for completeness
• Anything outdated or incorrect?
• Does it address all aspects of EMTALA?

• Check-in, triage, screening, stabilizing treatment, transfers, on-call requirements, LAMA, LWBS, what to do if there is a suspected violation, etc…
The Audit—Policies and Procedures

Other policies and procedures—Triage, Transfer, etc…

- Are policies up-to-date? Do they mesh with the main EMTALA policy?
- Is there duplication of effort?
- Conduct your own internal and external web search for EMTALA policies/procedures for your institution to see what comes up.

Google

The Audit--By-Laws

Who can perform the MSE?
The Audit—ED Work Flow

Meet with the ED Nurse Manager, ED Director, or ED Medical Director

• Have them walk you through the ED experience
• Note signage—is it adequate? In the appropriate languages? Wording matches the CMS requirements?
• Diagram the ED work flow
• Let them know you’ll follow up after you’ve audited the encounters

The Audit—Encounters

• Set aside time to audit encounters—it can be a long process
• Establish the sample size
• EMTALA Log must contain Name, Date, Time, Disposition
• Determine which aspects will you audit—Transfers only? LWBS? LAMA? LBFD? LOL? OMG?
  • You may want to focus on cases where the patient left early, to determine if there is a pattern warranting further investigation
  • Hourly rounding in ED Lobby is best practice
  • Make sure you document the number of times you looked for patients who don’t respond to calls in lobby
The Audit—Encounters

- You may find that you have to systematically search all the records—including discharge notes, progress notes, external documentation, etc…
- Review On-call lists—
  - do they reflect coverage of services available to inpatients?
  - Individual Practitioner Names?
  - Do changed lists retain both the original MD and replacement doc?
  - Are the lists saved for five years?
  - Is there a community call plan agreement of record, and was CMS notified in advance?

The Audit—Encounters

Auditing transfers is easier if they use a good transfer form:
The Audit--Summary

• Share preliminary data with ED Nurse Manager and Director, HIM Director and any others whose departments will be impacted

• Have them propose corrective actions and deadlines

• Draft the report to include your findings and the proposed corrective actions

• Route through appropriate channels for final review

• Publish final report as PDF, counter-signed by Compliance Officer; specify date of next audit
Resources

EMTALA Regulations:  http://www.ssa.gov/OP_Home/ssact/title18/1867.html#

State Operations Manual:

AHILA EMTALA Checklist:

Provider-based Urgent Care Centers are subject to EMTALA (page 54)

Questions?

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