EMTALA & HIPAA Rules: Dispelling the Myths and Doing Your Best Work
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EMS Caught in the Crossfire
EMTALA and ER Diversions

Understanding EMTALA
- The Emergency Medical Treatment and Active Labor Act (EMTALA)
  - Federal law
  - Applies to hospitals and physicians
  - Does not directly apply to non-hospital owned ambulances
  - BUT, the interaction between EMTALA and ambulances is significant

The EMTALA Statute
- The statute permits civil actions by plaintiffs against hospitals
- Does not permit civil actions against physicians
- But does permit CMS administrative enforcement against both hospitals and physicians (fines, etc.)

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## Why EMTALA?
- Passed largely as a response to the “horror stories” of women giving birth in the hallways of private hospitals in the Chicago area
- Private hospitals were turning away uninsured patients in active labor

## A Good Idea, Significantly Expanded . . .
- But final law also covered medical conditions other than active labor
- Covers *all* “emergency medical conditions”
- Purpose: to prevent disparate treatment of patients presenting for emergency care

## Basic EMTALA Requirements
- Any individual
- Who comes to
- The hospital
- Must be given:
  - Medical screening examination
  - By qualified medical personnel, AND
  - If Emergency Medical Condition is present
  - Stabilizing treatment
  - Or appropriate transfer

## “Any individual . . .”
- Means *anyone*
  - Regardless of other insurance status
  - Regardless of ability to pay
  - Regardless of age
  - Regardless of any other classifications

## Presents to the “Hospital”
- A dedicated ED is *any* department that is:
  - Licensed by the state as an ER or ED
  - Held out to the public as a place for emergency care
  - Or a department that provides emergency care in at least 1/3 of all outpatient visits in a calendar year

## Also Means Hospital Property
- The entire main hospital campus
- 250 yards of the main campus
  - *Parking lots*, sidewalks, driveways
Hospital Owned Ambulance

- Individual has come to the hospital if they are in a ground or air ambulance owned ambulance
  - Even if ambulance is not on hospital grounds

General Rule for Hospital Owned Ambulance

- Must transport the patient to the hospital that owns the ambulance

Exceptions to General Rule for Hospital Owned Ambulance

- "Communitywide EMS protocols" direct transport to another destination
- Medical command physician directs transport to another destination
  - BUT, the physician cannot be employed or affiliated with the hospital that owns/operates the ambulance

Non-Hospital Owned Ambulance

- If not on "hospital property," the hospital's EMTALA obligations do not apply

Radio Contact Does not Count

- "An individual in a nonhospital-owned ambulance off hospital property is not considered to have come to the hospital's emergency department, even if a member of the ambulance staff contacts the hospital by telephone or telemetry communications and informs the hospital that they want to transport the individual to the hospital for examination and treatment."

Non-Hospital Owned Ambulance

- If on "hospital property," the hospital's EMTALA obligations apply
- Even if the ambulance staff disregards a diversionary order and shows up anyway
Best Practices for Diversions

- Confirm a true diversionary status exists
- Determine which resources are lacking at the hospital of the patient’s choice
- Consult with medical command regarding the destination issue

Inform the Patient of...

- The nature of the diversion
- The unavailability of specific resources
- The estimated wait time
- The risks to his or her condition that could arise from the lack of specific resources, the wait time, or both

Best Practices for Diversions

- Consider having medical command speak directly to the patient
- Document patient’s informed decision
  - Document information given to the patient
  - Document patient’s response and specific instructions
- Obtain signature from patient or legally responsible decision-maker

EMTALA’s Remaining Requirements

- Perform a medical screening examination
  - Within capabilities of hospital’s ED
  - Must be conducted by qualified medical personnel as determined in hospital bylaws or in hospital rules and regulations

EMTALA’s Remaining Requirements

- Provide stabilizing treatment if an emergency medical condition is detected
  - Within capabilities of hospital
  - “Stabilized” means that no material deterioration of patient condition is likely

- Or, provide an “appropriate transfer”
  - Physician certifies that benefits of transfer outweigh the risks
  - Hospital uses appropriate personnel and transportation equipment to perform the transfer
  - Hospital must select appropriate transfer resource (ground, air, ALS vs. BLS, etc.)
Transfers
- If transfer is appropriate, hospital must send:
  - Transfer certification
  - All medical records regarding the emergency condition that are available at the time of transfer
  - All other records must be sent as soon as practicable

“Patient Parking”

12/14/05 – Memo From CMS
- “This practice may result in a violation of the Emergency Medical Treatment and Labor Act (EMTALA) and raises serious concerns for patient care and the provision of emergency services in a community.”

April 27, 2007 Memo From CMS
- “This does not mean that a hospital will necessarily have violated EMTALA if it does not, in every instance, immediately assume from the EMS provider all responsibility for the individual.”

April 27, 2007 Memo From CMS
- “It could be reasonable . . . for the hospital to ask the EMS provider to stay with the individual until such time as ED staff is available.”

The Bottom Line
- Not always reasonable to expect that ED staff can assume care immediately
- Make sure ED staff knows you are there
- Ensure patient is getting appropriate care
- Hospital can ask you to stay with the patient, but, absent a state or local law, regulation or protocol, they cannot require you to stay once the patient is in the ED
The Bottom Line

- Remember, “diversionary orders” are ultimately requests by the hospital that you take your patient somewhere else
  - However, remember that patient care is the ultimate goal
  - If the hospital cannot timely or effectively care for your patient, it is not the best choice in destination

HIPAA

- Federal privacy law
- Fundamental responsibility of all EMS providers and staff
- Legal and ethical obligation

Protected Health Information (PHI)

- Any information about a person’s past, present or future health care
- Identifies or could reasonably identify patient
  - Name
  - Address
  - Identifying Numbers
  - Birth Date

Examples of PHI

- Patient care reports
- Medical necessity forms
- Patient bills
- Records from other facilities
- Photos & video
General Rules Under HIPAA

- Cannot use or disclose PHI for any purpose unless permitted under HIPAA
- Applies to patients that are alive and deceased
- PHI is property of the organization

Permitted Disclosures of PHI

- Treatment
- Payment
- Operations

Treatment

- Any purpose related to providing care to a patient
- Can share with anyone involved in patient care including other providers and non-providers

Minimum Necessary Rule

- Only use minimum amount of PHI absolutely necessary to accomplish purpose of disclosure

Example: Remove identifying information from patient care report before using for QI

Notice of Privacy Practices

- Tells patients about their rights under HIPAA
- Contains info about your agency’s privacy policies & procedures

Giving Out the NPP

- Whenever it would not impede patient care, give it to patient or caregiver
- Always attempt to obtain signature from patient verifying receipt of notice

WHEN?: At the time of service
**Giving Out the NPP**

- If patient under duress, unconscious, incapacitated, or serious emergency:

  Focus on patient care first!

**HIPAA and Radio Communications**

- HIPAA permits any disclosure of PHI when necessary for treatment purposes
- OK to use name over radio to:
  - Find patient
  - Enable hospital to retrieve records

**HIPAA and Radio Communications**

What if someone overhears patient’s name on scanner?

- Considered an “incidental disclosure”
- Not a HIPAA violation
- Same as if a bystander overhears patient info

**HIPAA and Law Enforcement**

- Patients may disclose their own PHI to law enforcement or anyone else they wish
- If police officer speaks directly to patient, HIPAA is not an issue as it is the patient giving their medical information to the police

**Disclosures of PHI To Law Enforcement**

1. OK to share info with police when state law requires it

   Example:

   OK to notify police of certain injuries such as:
   - Gunshot wounds, burns, animal bites, etc. when required by state law
   - *Check with HIPAA Compliance Officer

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Locating/Identifying Someone

2. OK to disclose limited PHI to help police identify or locate:
   - Suspect
   - Fugitive
   - Material witness
   - Missing person

Crime Victims

3. OK to disclose about person believed to be a crime victim

   If patient unconscious
   → OK if in best interest of patient AND if officer agrees it will not be used against victim

Related to Crime

- OK to disclose when it appears victim died as a result of criminal activity
- OK to disclose when a crime occurs on your premises
- OK to disclose to report crime in emergencies

HIPAA and Family/Friends

- OK to disclose PHI to relative, friend, or other person involved in patient’s care if in best interest of pt
- Can also disclose transport destination & general condition (including death) to family members or others involved in pt’s care
- Use judgment if not in best interest of patient (e.g., domestic violence situation)

Transfer of Patient Care

- OK to share PHI with:
  - Staff members
  - Patient registration personnel
  - Others who perform treatment or payment-related tasks
  - Can be done in regular place and at regular voice level
  - Take reasonable precautions to minimize “incidental disclosures”

Interfacility Transports

- OK for EMS personnel to look at patient records for treatment purposes
- EMS professionals are health care providers who are involved in the treatment of the patient
- Not just “giving a ride” to the other facility!
Electronic PHI Access

• Don’t leave devices unattended
• Every user should have unique ID and password
• Automatic log-off features when unattended for period of time

Electronic PHI

- DO NOT SHARE PASSWORDS!
- Do not download copies of patient data onto thumb drive or other portable device unless authorized to do so
- No personal cell phones for PHI

The Root Cause of EMS Liability

Failure to Meet The Basic Expectations of the Patient and the Public!

Most of What We Do As EMS Providers is SIMPLE STUFF . . .

BUT...
This “Simple Stuff” Requires Caring, Compassion, Communication
Most EMS lawsuits are NOT based on negligence, but on COMMUNICATIONS ISSUES and tiny instances of disrespect and inattention – that often come from a BAD ATTITUDE!

“People don’t remember much about our medicine. But they do remember how we make them feel.”

Thom Dick, “People Care”

It’s All About Avoiding a BAD ATTITUDE! . . .