National Uninsured Audioconference

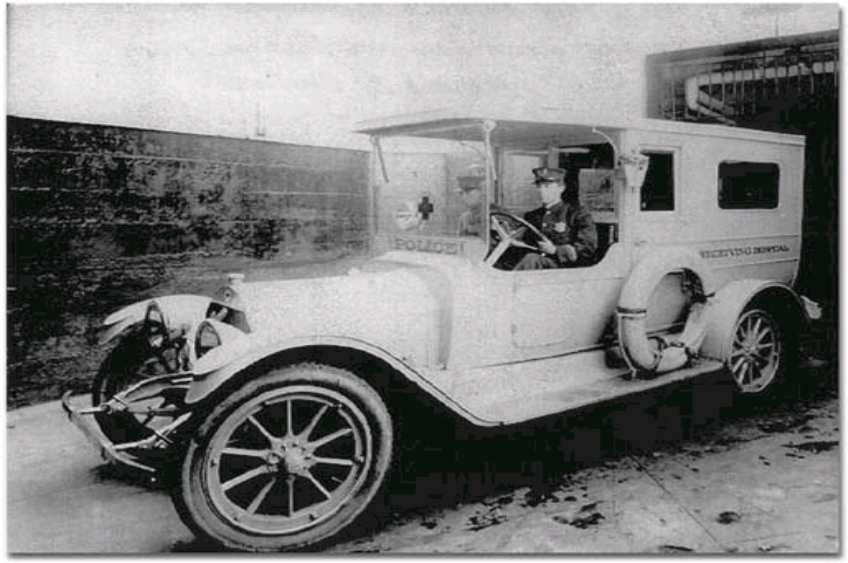
EMTALA Anti-Dumping Update

March 5, 2008

Overview

- Patient Transfers --
  - Unintended Consequences
- Behavioral Health --
  - A Mighty Wind Blows between EMTALA and State Laws

Unintended Consequences – EMTALA Transfers



EMTALA and Patient Transfers

- Transfers by Sending Hospitals
  - Detailed standards are set forth in statute, regulations and interpretive guidance
- Acceptance of Transfers by Receiving Hospitals
  - Core obligation, but…
  - Little guidance

Transfers in Crisis

- Closure of hospitals or hospital services (e.g., pediatrics, psychiatric services)
- Lack of on-call coverage in many specialties (e.g., orthopedics)
- Misunderstanding of EMTALA obligations (especially the meaning of "stabilized")
- Lack of coordination by receiving hospitals and physicians of the transfer acceptance process

Lack of Capacity at Sending Hospitals

- Many hospitals have huge gaps in call coverage, and therefore, service capacity
  - Cannot force physicians to accept call
  - Cannot afford to pay what it takes to have full-time call coverage
- Wide variation between hospitals in the same community as to call coverage
- Many transfer cases are not specialty/tertiary care, but are being transferred due to the lack of on-call coverage

The View from Receiving Hospitals

- Receiving hospitals are seeing transfers of routine cases from hundreds of miles:
  - Believe that most cases could be handled by the sending hospital by their own staff physicians
  - Believe that most cases could be transferred to hospitals closer to the sending hospital
  - Believe that transfers are often Medicaid and indigent (defying the law of averages)
- Some tertiary/quaternary hospitals are seeing a crimping of their mission or threat to financial stability

The View From Receiving Physicians

- Receiving physicians are tired of accepting emergency patients from other hospitals that have qualified specialists who are not on call or refuse call

Problems and Solutions

- Better clarity of "stabilized" – many physicians and hospitals (and maybe CMS) do not understand this essential term
- More objective standards for required on-call coverage
- Multi-hospital or regionalized call coverage coordination (although beware of antitrust laws)
- Better handling of the transfer acceptance process by receiving hospitals

Problems and Solutions

- Greater responsibility on hospitals and staff physicians to meet their own patient needs and keep patients in their local community if possible
- Use of transfer agreements, including requiring return transfer of patients when emergency condition stabilized at the receiving hospital
- Regional coordination of the transfer process (real-time identification of open beds and services)

Behavioral Health and EMTALA

A Mighty Wind Blows between EMTALA and State Laws

Behavioral Health Patients Core Requirements

- Psychiatric emergencies added to the definition of EMC by CMS in 1994 EMTALA regulations
- Medical screening must include medical **and** behavioral assessment
- The medical screening must be performed by qualified hospital personnel
- The hospital must continue to monitor the patient until admission/transfer/discharge

Behavioral Health Patients Core Requirements

- An emergency medical condition includes an individual who expresses suicidal or homicidal thoughts or gestures that are determined to be dangerous to self or others (CMS Interpretive Guidelines)

Behavioral Health Patients CMS Guidance

"Hospitals located in those States which have State/local laws that particular individuals, such as psychiatric or indigent individuals, to be evaluated and treated at designated facilities/hospitals may violate EMTALA if the hospital disregards the EMTALA requirements and does not conduct an MSE and provide stabilizing treatment or conduct an appropriate transfer prior to referring the individual to the State/local facility."

Behavioral Health Patients CMS Guidance

- "Hospitals are prohibited from discharging individuals who have not been screened or who have an emergency medical condition to non-hospital facilities for purposes of compliance with State law."
- "The existence of a State law is not a defense to an EMTALA violation for failure to provide an MSE or failure to stabilize an EMC therefore [*sic*] hospitals must meet federal requirements or risk violating EMTALA."

Behavioral Health Interpretive Guidance

- However –

  "A sending hospital's appropriate transfer of an individual in accordance with community-wide protocols where the hospital cannot provide stabilizing treatment would be deemed to indicate compliance with [EMTALA]."

EMTALA and State Law Holds

Many states --

- Permit certain persons to hold, detain and/or take into custody an individual who is danger to self/others, or gravely disabled, for evaluation and treatment at a designated facility; and/or
- Provide immunity to medical personnel to hold an individual who is danger to self/others, or gravely disabled in order to arrange for behavioral health services

EMTALA & Holds

Question: Does EMTALA recognize psychiatric holds???

Answer: NO

EMTALA & Holds

- EMTALA does not authorize involuntary treatment for a patient who has capacity to refuse treatment… but
- State law may permit involuntary detention, transfer and limited types of treatment for certain psych patients

EMTALA & Holds

- Does a behavioral health patient have an emergency condition if the patient is under a hold by law enforcement or non-hospital personnel as a danger to self or others?
- Is an appropriate transfer required if the patient is on a hold and the ED physician disagrees with the reasons for a hold?
- Can the patient be discharged, even if the patient will be transported to a regional evaluation/treatment facility?

Medical and Psychiatric Patients Special Service Needs

Medical Procedures	Psychiatric Procedures
No concept of a hold	Issue of psych holds distinguishes psych patients
Patients may refuse transfer	Detained patients may not refuse transfer, even if competent
No involuntary option for treating competent patient	System drives voluntary patients to involuntary status

Medical and Psychiatric Patients Special Service Needs

Medical Procedures

- Must admit or transfer to appropriate level of care
- Receiving hospital must accept regardless of payment status/residence
- Must treat all patients alike without discrimination on non-clinical grounds

Psychiatric Procedures

- Some patients cannot be transferred without a hold
- Local practice may require consideration of patient's pay status or residence
- Are some patients treated differently than patients with insurance coverage due to state and local mandates?

Problems and Solutions

- The EMTALA regulations or guidelines must acknowledge the concept of a psychiatric hold and its relationship to meeting the EMTALA obligations
- Implementing the recommendations of the EMTALA TAG

National Uninsured Audioconference

EMTALA Anti-Dumping Update

March 5, 2008