EMTALA Anti-dumping Update

Uninsured Audioconference March 5, 2008

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So Where are We Today?

CMS EMTALA Enforcement Data

National Data	FY 04	FY 05	FY 06
# Complaints	658	738	744
# Surveys	616	649	642
% with Violations	30%	38%	40%

FY 06 Enforcement Actions Putting EMTALA in Perspective

EMTALA

Hospital/CAH Complaint
Surveys

- 642 surveys
- 40% substantiated (258)
- 4,743 surveys
- 3.1% substantiated at condition-level (147)
 - 27% substantiated deficiencies at any level (1281)

Regional FY 06 EMTALA Complaint Volume

RO 1	11	RO 6	131
RO 2	13	RO 7	64
RO 3	34	RO 8	52
RO 4	329	RO 9	24
RO 5	64	RO 10	22

National Total: 744

Regional FY 06 EMTALA Complaint Rates*

RO 1	4.2%	RO 6	12.0%
RO 2	3.2%	RO 7	12.3%
RO 3	6.8%	RO 8	15.0%
RO 4	28.7%	RO 9	4.1%
RO 5	6.0%	RO 10	9.4%

National Rate: 12.1%

^{*} Rate = # Complaints divided by # Hospitals

State Complaint Rates

• Only 1 State had consistently high complaint rates over time:

	FY 04	FY 05	FY 06
State A	83.7%	97.0%	92.1%

State A had 3.9% of all US hospitals in FY 06, but 29.8% of all EMTALA complaints

2006 EMTALA Data for California and Florida

	California	Florida
Total Hospitals	419	239
Total Complaints	10	220
Disapproved Investigations	0	49
Approved Investigations	10	171
Percent Approved	100%	78%
Substantiated	8	40
Percent Substantiated	80%	23%
Terminated	0	0

What does this data tell us about enforcement consistency?

• Since EMTALA enforcement is complaint-driven, a major source of regional variation is beyond CMS control

 Regional and state variation in the rate of EMTALA complaints causes different levels of enforcement activity

Source of FY 06 Complaints

Patient/family	241	36.0%
Self-report	58	8.7%
Other provider	215	32.1%
Staff	13	1.9%
CMS	5	0.8%
Other	137	20.5%
Total	669*	100.0%

^{*} Total ≠ total complaints. 10 states had 22 more sources than complaints; 14 states identified no source in 91 cases.

Distribution of FY 06 EMTALA Allegations & Violations

	Allegations	Violations
	(N=1349)	(N=473)
Overall	11.0%	14.8%
On-call	6.2%	6.3%
Screening	26.2%	30.4%
Delay	5.5%	3.0%
Stabilization	20.0%	13.3%
Transfer/dis.	17.9%	16.1%
Recipient Hospital	8.2%	8.7%
Signage	0.9%	1.1%
Log	2.3%	3.6%

CMS Enforcement Data

• Since inception of EMTALA 13 hospitals have been terminated from Medicare.

Regulatory Enforcement Process: OIG

2006

>21 cases resulting in \$715,000 in recoveries

2005

≥ 18 cases resulting in \$455,500 in recoveries

2004

>21 cases resulting in \$535,000 in recoveries

2003

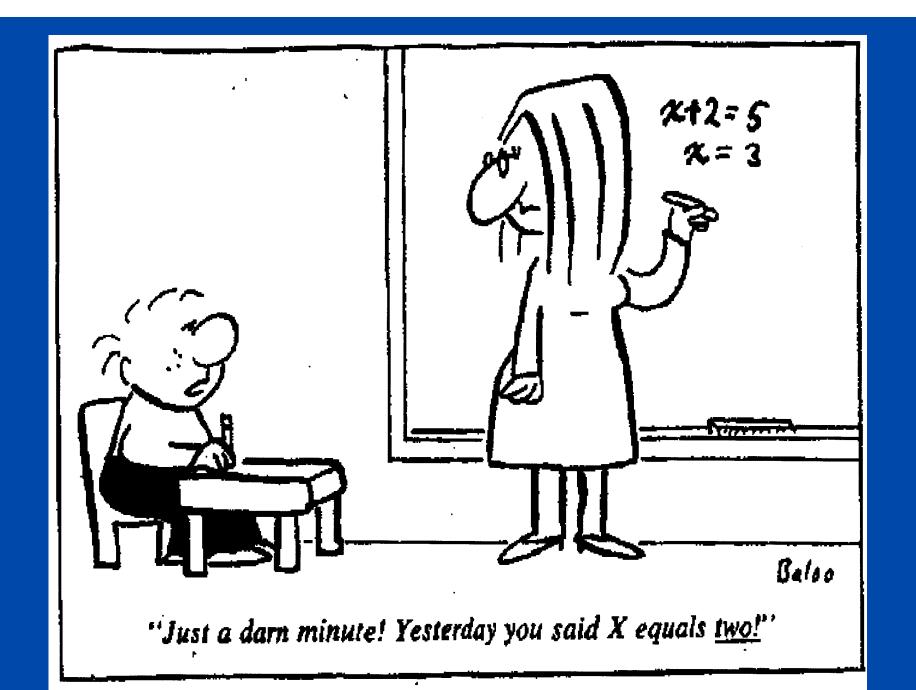
>28 cases resulting in \$737,000 in recoveries

2002

>22 cases resulting in \$501,000 in recoveries

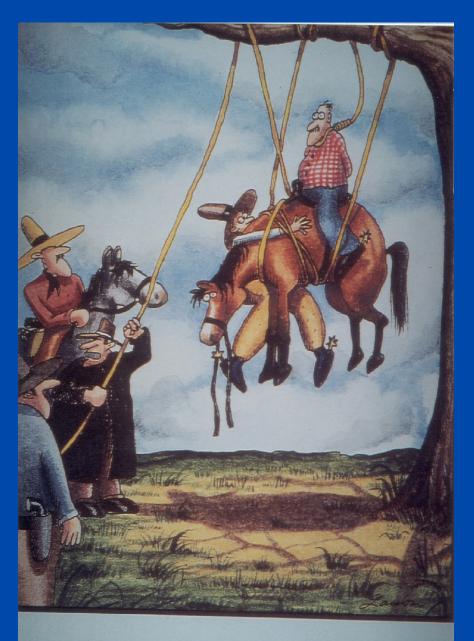
What does this data tell us about enforcement consistency?

- Distribution of types of violations generally correlates with distribution of allegations
 - Reinforces that EMTALA enforcement is complaintdriven
- Screening, stabilizing treatment, & transfer are the big problem areas
 - CMS enforcement is not focused on administrative violations



Evolution of EMTALA

- 1985 EMTALA enacted (42 U.S.C. §1395 dd)
- 1989 Statutory "enhancements"
- 1990 More statutory "enhancements"
- 1994 Interim final Regulations
- 1998 Interpretive Guidelines
- 1999 Special Advisory Bulletin
- 2000 OPPS Regulations
- 2001 OPPS Q&A
- 2002 CMS Guidance Letters, Proposed Regulations
- 2003 Final Regulations
- 2003 S/C Guidance Letter
- 2003 Medicare Modernization Act
- 2004 Revised Interpretive Guidelines
- 2005-2007 EMTALA TAG
- 2006-2008 Updated S/C Guidance Letters



Okay, okay, okay . . . everyone just calm down and we'll try this thing one more time."