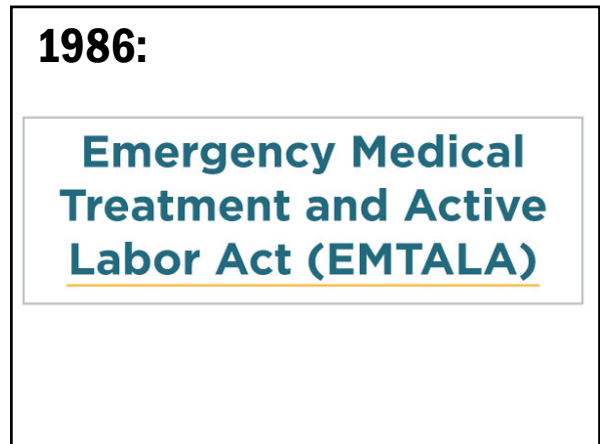




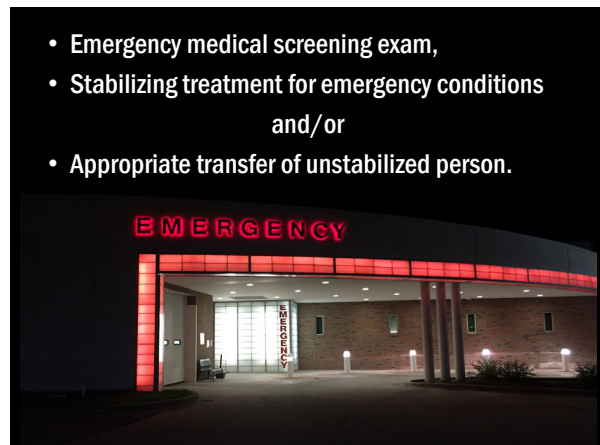
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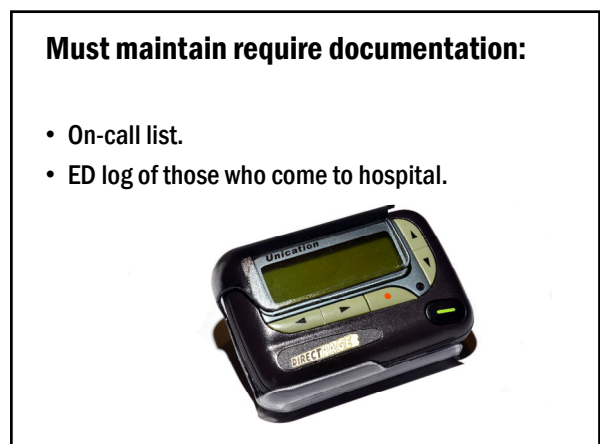
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6

EMTALA Penalties

- Civil penalties
 - Physicians: \$50,000 per violation.
 - Hospitals:
 - Less than 100 beds: \$25,000 per violation
 - 100+ beds: \$50,000 per violation



7

- Hospitals may be sued for damages.
 - Individuals who suffer personal harm.
 - Medical facilities that suffer financial loss.
- Termination of Medicare provider agreement and exclusion from Medicare and Medicaid.



8

- Termination from Medicare and Medicaid
- Hospital fines up to **\$50,000**
- Physician fines **\$50,000**
- Lawsuits for civil damages
- Lawsuits for civil rights violations



9



10

EMTALA is triggered when:

- Person "comes to the hospital"
 - Request is made for emergency care
- AND**
- Person is not already a patient at the hospital.

11

For hospitals without and ED

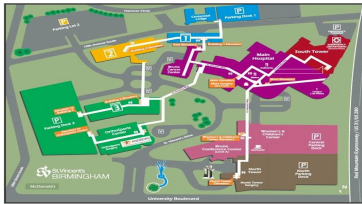
Specialty Hospitals



- Hospital participates in Medicare
 - Hospital has specialized capabilities
- AND**
- Hospital receives request for transfer from another facility.

12

"Comes to the Hospital"



- Area property within 250 yards of hospital
 - Excludes any public streets
- Off-campus facility with a dedicated emergency dept
- In hospital-owned ambulance.

13

- Cannot divert inbound ambulance unless you are on diversionary status.
 - (*Arrington v. Wong* (9th Cir. 2001))
- May discuss best interests of patient.



14

What do you mean emergency?



"a reasonably prudent person would believe person requires emergency care"

15

Not an emergency?

- Needs to be : "clearly" non-emergent
 - Preventative care (e.g., immunization, flu shots, community outreach, etc.)
 - Requests to perform non-emergency test (e.g., blood pressure or x-ray).
 - Gather evidence (e.g., BAC test, sexual assault, etc.)
 - Prescheduled appointment by physician.

**Document non-emergent request.*

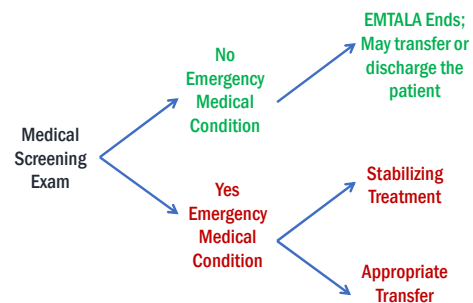
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"Person Is Not Already A Patient"

- EMTALA does not apply to "patients" of hospital.
 - Inpatients: EMTALA ends once the person is admitted as an inpatient in good faith, i.e., admitted for bed occupancy with expectation that person will remain overnight.
 - Outpatients: EMTALA does not apply if person has begun receiving outpatient services other than emergency care.
- EMTALA does not apply even if emergency arises after person's admission or after outpatient services begin.

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Medical Screening Exam



18

Medical Screening Exam

IT'S THE LAW!
 IF YOU HAVE A MEDICAL EMERGENCY OR ARE IN LABOR
 YOU HAVE THE RIGHT TO RECEIVE, within the capabilities
 of this hospital's staff and facilities:

- An appropriate MEDICAL SCREENING EXAMINATION
- Necessary STABILIZING TREATMENT (including
 treatment of an unborn child)
 and if necessary
- An appropriate TRANSFER to another facility
 even if

YOU CANNOT PAY or DO NOT HAVE MEDICAL INSURANCE

19

Case #1



20

Medical Screening Exam



- Applied in non-discriminatory manner.
- MSE is not the same as triage

21

Medical Screening Exam



- Performed by qualified medical personnel ("QMP")
 - Anyone could technically be a QMP.
 - Identified in documents approved by governing body.
 - Competent to perform exam.
 - Privileged to perform exam.

22

Medical Screening Exam

- Must allow the QMP to evaluate for an EMC
- Must treat any patient with an EMC
 - Until they are stable or can be transferred.
- Screening exam is ongoing process
 - Continues until stabilized, admitted or transferred.

23

Medical Screening Exam

- Should normally include:
 - Vital signs.
 - History.
 - Documented focused physical exam
 - If needed, ancillary tests and specialists available
 through hospital, e.g., lab tests, diagnostic tests and
 procedures, CT scans or other imaging services, etc.
 - Continued monitoring.

24

Emergency Medical Condition

- ...manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances, and/or substance abuse) such that the **absence of immediate medical attention** could reasonably be expected to result in:
 - Placing the individual's health in serious jeopardy
 - Serious impairment to bodily functions
 - Serious dysfunction of any bodily organ or part.

25

EMC in Pregnancy

- Contractions = EMC (active labor)
 - Inadequate time to effect a safe transfer to another hospital before delivery; or
 - Transfer may pose a threat to the health or safety of the woman or the unborn child.
 - False labor must be well documented

26

The EMTALA screenout?



27

EMTALA:

"Obtain or attempt to obtain written and informed refusal of examination, treatment..."

28

Option to Decline a MSE

- Does the patient have a clinical presentation that suggests impaired capacity? (including, but not limited to, head injury, intoxication, psychiatric illness, dementia, etc?)
 - Yes ___
 - No ___
 - Unknown ___

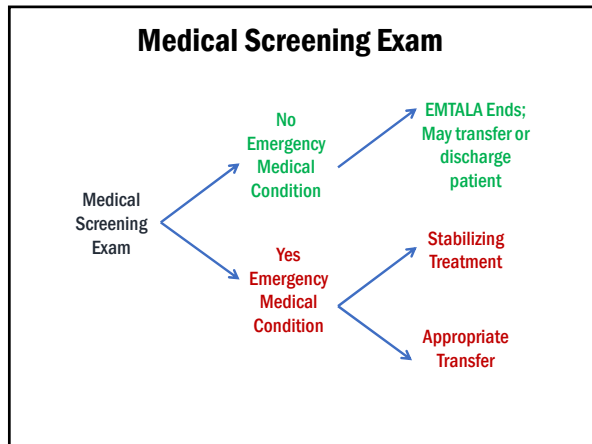
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Refusal of Screening Examination and Treatment

I understand that the hospital has a duty to provide care and has offered to:

- **Perform a medical screening examination** and determine if an emergency medical condition exists.
- By refusing the services offered I am doing so **against the advice of the hospital staff.**
- I also understand that the availability of medical services, including examination and stabilizing treatment, as well as necessary transfer to another facility, **is not based on my ability to pay for these services.**
- I have been given the opportunity to **ask questions** about the above information and my questions have been answered.

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32

Stabilizing Treatment

- If the MSE reveals an EMC the hospital must offer:
 - Stabilizing treatment within its capabilities.
 - “Such care necessary to assure, within reasonable medical probability, that no material deterioration of condition is likely to result from or occur during transfer from facility.”
 - For pregnant woman, delivery of child and placenta.
 - An appropriate transfer to another facility.
- EMTALA ends once patient is stabilized or admitted.

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34

Stable for Transfer?

- Under regulation:
 - No material deterioration of condition is likely, within a reasonable medical probability, to result from transfer, or
 - For pregnant woman, delivery of child and placenta.

(42 CFR 489.24(b))

35

Stable for Transfer?

- Under Interpretive Interpretive Guidelines
 - Emergency medical condition has resolved, even though underlying medical condition may persist.
 - For psychiatric conditions, person is protected and prevented from harming themselves or others.

(Interpretive Guidelines 489.24(d))

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Stable for Discharge?

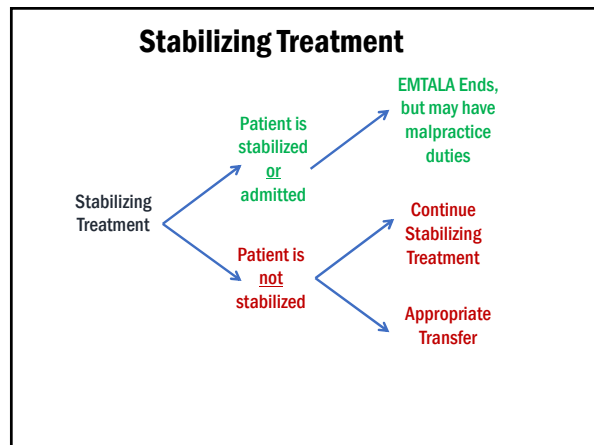
- Within reasonable clinical confidence, patient has reached a point where their continued care (including diagnostics or treatment) could be reasonably performed as an outpatient or later as an inpatient provided the patient is given a plan for appropriate follow-up care as part of discharge instructions.
- For psychiatric conditions, that the patient is no longer a threat to themselves or others.
(Interpretive Guidelines 489.24(d))

37

Stable for Transfer or Discharge?

- If a woman is having contractions:
 - Hospital must deliver the baby and placenta, or
 - Hospital must perform appropriate transfer, including discharge back to home.
- False labor must be certified by QMP after reasonable period of observation.
(42 CFR 489.24(d))

38




39

Appropriate Transfers



40

Case #3: Transfer failures



41

Appropriate Transfer



- Transfer :
 - Movement outside hospital at direction of hospital personnel, including discharge.
 - Not if person leaves the hospital without permission.
 - Not movement within or between the same hospital.
(42 CFR 489.24(b), (d)(e); Interpretive Guidelines 489.24(a))

42

Appropriate Transfer

- If patient is not stabilized, hospital may not transfer or discharge patient unless:
 - Patient or representative requests transfer
 - or
 - Physician certifies that benefits > risks
 - and
 - Transfer is "appropriate" ...
(42 CFR 489.24(b), (d)(e); Interpretive Guidelines 489.24(a))

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"Appropriate" Transfer

- Transfers of unstable patients must be "appropriate", i.e.,
- Transferring hospital provides treatment within its capability to minimize risk of harm to patient.
 - Transferring hospital contacts receiving facility and facility agrees to accept the transfer.
 - Identify person with authority to accept for receiving facility.
 - Transferring hospital sends:
 - Relevant records available at the time.
 - Name on-call physician who failed to respond, if any.
 - Additional records as soon as practicable.
 - Transfer effected through qualified personnel with proper equipment, including life support measures.
(42 CFR 489.24(e)(2))

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Patient refusal of MSE

- Hospital must:
 - Offer exam, treatment or transfer.
 - Document the exam, treatment or transfer that was refused.
 - Document that risks and benefits were explained to patient.
 - Document basis for refusal of transfer.
 - Take reasonable steps to secure written informed refusal.
 - If patient refuses to sign, document refusal.
(42 CFR 489.24(d)(3), (5))

45

Case #4: Delay in MSE



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EMTALA Delays

- Cannot delay exam or treatment to inquire about payment.
- Cannot seek preauthorization from insurer until after you have conducted exam and initiated stabilizing treatment.
- Do not suggest to patient that:
 - They should leave.
 - They could obtain services elsewhere at less cost.
 - Insurance may not cover treatment.
(Interpretive Guidelines 489.24(a), (d)(4))

47



*"hospitals should be **very concerned about patients LWBS**...a hospital could violate the patient antidumping statute if it keeps patients waiting so long that they leave without being seen ..."*

48

EMTALA Delays

- So long as it does not delay or discourage exam or treatment, hospital may:
 - Follow reasonable registration process
 - Contact primary physician or health plan to obtain history or identify needs.
 - Not seek preauthorization.
 - Have knowledgeable person answer questions about payment.

(Interpretive Guidelines 489.24(a))

49

Avoiding Penalties



50

Avoiding Penalties

- Do what is in the best interest of the patient.
- Document, document, document!
 - Appropriate medical screening exam, including:
 - Performed by QMP.
 - Addressed presenting symptoms.
 - Ongoing monitoring.
 - Whether patient had emergency medical condition.
 - Whether patient was stabilized.
 - Patient received appropriate transfer, including physician certification of risks and benefits.
 - Patient left AMA.

51

Avoiding Penalties

- Maintain written EMTALA policies, forms and signs.
- Train and re-train staff regarding EMTALA compliance.
 - Document the training.
- Maintain on-call list.
- Ensure physicians respond to call.
- Ensure QMPs are identified and qualified.
 - Identified in document approved by board.
 - Privileged to provide screening exams.
- Maintain and periodically review ED log.
 - Update as appropriate.

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Avoiding Penalties

- Beware transfer by private car.
 - Document that we offered alternative transport.
 - Document circumstances of transfer.



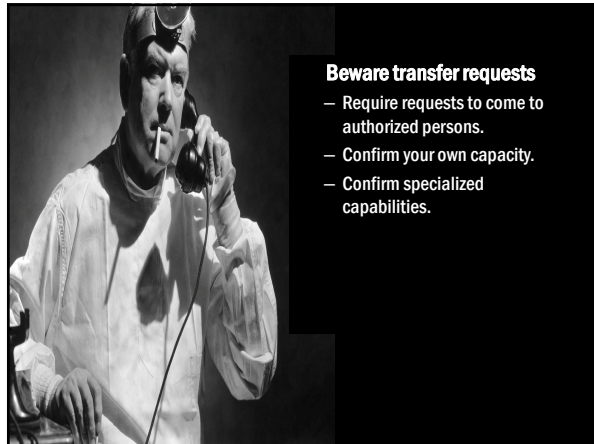
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Avoiding Penalties

- Beware inbound ambulances.
 - Generally cannot turn away unless on divert.
 - May discuss treatment alternatives, but document.



54



55

Avoiding Penalties

- Immediately respond to suspected violations.
 - Gather and confirm facts, including documents and witness statements.
 - Supplement record as appropriate.
 - Impose sanctions if appropriate.
 - Provide additional training.

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Avoiding Penalties



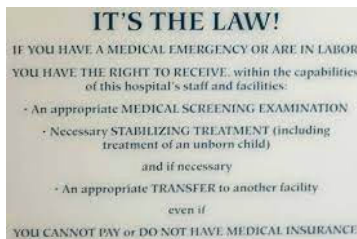
- No duty to self-report your own violations.
 - May want to self-report if another hospital will report.
- Must report:
 - On-call physicians who failed to respond.
 - Receipt of improper transfer.

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Avoiding Penalties

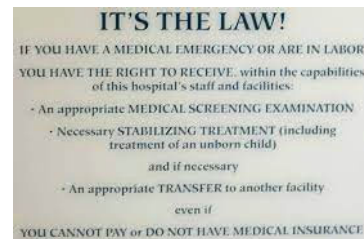
- If government investigates:
 - Cooperate with investigation.
 - Gather and supplement with important facts.
 - Implement appropriate plan of correction.
 - Respond with your explanation of the facts.
 - If there was no EMTALA violation, explain why.
 - If there was EMTALA violation, explain why you should not be penalized, e.g.,
 - Appropriate policies in place.
 - Appropriate training.
 - Rogue employee.
 - Corrective action taken.

58



- Have a healthy fear of EMTALA violations
- Basically everyone gets seen
- When in doubt ask

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