GET OUT OF MY EMERGENCY ROOM!

Auditing for EMTALA Compliance
Jean Lambert, MBA, BSN, RN
September, 2008

Froedtert Hospital

400 Bed Academic Medical Center Tertiary Care; Referral Center
Staffed by Medical College of Wisconsin Physicians
Only adult level I Trauma Center in Eastern Wisconsin
>3,500 staff
Charter member Froedtert & Community Health

Objectives

- Develop a basic understanding of the core elements of EMTALA
- Develop an appreciation for the cost of non-compliance with EMTALA
- Develop an understanding of the steps involved in auditing for compliance
E.M.T.A.L.A.

- Emergency
- Medical
- Treatment
- And Active
- Labor
- Act

EMTALA ...what is it?

- Federal 'Anti-Dumping’ Law
- Guarantees access to healthcare
- Purpose: safe care; safe transfers

EMTALA regulates...

- Medicare hospitals, campus
- Hospital staff and medical staff
- On-call physicians
- DOES NOT REGULATE:
  - Private physician offices
  - HMO’s or insurance companies
  - VA or military hospitals
  - Off-campus facility unless dedicated ED
EMTALA covers....

- All patients regardless of ability to pay
- Unscheduled presentations
- Scheduled with obvious need for care
- Presenting at any point of entry
- 250 yard rule

Medical Screening Exam

- Basic requirement for every patient
- More than just triage
- To determine the presence of an emergency medical condition
- Cannot be delayed for financial inquiry

Emergency Medical Condition

- In the absence of immediate attention:
  - Serious danger to health and safety
  - Serious impairment to bodily function
  - Pregnancy with contractions present
  - Serious dysfunction of any body part
  - Threat to safety of unborn child

NO EMC = NO EMTALA
On-Call Physicians

- Maintain on-call list to meet patient needs
- Written policies and procedures
  - In absence of specialty physician
  - Simultaneous call
  - Permit on-call MDs to do surgery

Transfers

- Any time the patient leaves the premises: transfer or discharge
- Exceptions:
  - AMA (against medical advice)
  - OR
  - Deceased

Transfer Requirements

- Hospital A. can’t provide care
- Stabilize prior to transfer
- MD Certification
- Consent
- Hospital B. accepts transfer
- Pertinent records sent timely
- Appropriate transportation
**Documentation**
- ED central log
- On-call schedules
- Policies/procedures
- Consent
- MD Certification

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**Transfers within Health Systems**

Adherence to EMTALA:
Currently **NOT** a requirement

![Image of two hospitals connected by an arrow]

**ST. ELSEWHERE SYSTEM OF AMERICA**

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**Stability Requirements**
- Not at risk to deteriorate
- OB - contractions present - must deliver baby and placenta
- Stable for transfer: minimize risk
- Unstable patients: may transfer when benefits outweigh risks
**Reporting**

- State does investigation; report goes to CMS
- Investigation takes place at both reporting and reported facilities
- Not limited to incident; entire scope of EMTALA can be reviewed

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**EMTALA...the punishment**

- Fine of $25/50K per patient incident
- MD fines $50K per incident
- Termination from Medicare

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**EMTALA Resources**

- CFR 489.24
- emtala.com
- Patient Transfers: How to Comply with the Law by Steven Frew
- Interpretive Guidelines: www.emtala.com/ig.pdf
Million-dollar Advice $$

The final answer:
Provide Medical Screening Exam beyond triage to everyone who presents, sufficient to rule out an Emergency Medical Condition (EMC).

Million-dollar Advice $$

The final answer:
Don't delay medical screening exam to discuss payment or insurance.

Million-dollar Advice $$

The final answer:
Provide stabilizing care such that the patient is not at risk to deteriorate during transfer or discharge.
Million-dollar Advice $$

The final answer:
Provide an on-call coverage schedule for all medical specialties on staff, maintain list for 5 years.

Million-dollar Advice $$

The final answer:
Assure that on-call physicians respond in a timely manner to provide evaluation and stabilization.

Million-dollar Advice $$

The final answer:
Transfer patients only for services or care not available at your hospital, or for documented patient request.
Million-dollar Advice $$
The final answer:
Obtain and document transfer acceptance from the receiving facility BEFORE the patient leaves your facility.

Million-dollar Advice $$
The final answer:
Provide medically appropriate vehicles, qualified personnel, and life support equipment

Million-dollar Advice $$
The final answer:
I hereby certify...risks are...benefits: Provide physician certification with clearly stated risks and benefits of transfer to accompany patient
Million-dollar Advice $$

The final answer:
List the name and address of any physician who failed or refused to respond in the transfer record if that necessitated patient transfer.

Million-dollar Advice $$

The final answer:
Obtain and document full vital signs at time of transfer or discharge.

Without vital signs, you cannot prove stability or risk of transfer.

Million-dollar Advice $$

Consent
Transfer........
Risks........Benefits
by ambulance
to..........
Million-dollar Advice $$

Send records:
- Exam record
- Test results
- X-rays
- Consents
- Transfer form
- MD Certification

The final answer:
Provide full documentation of exam, testing, studies and other findings with transfer or soon thereafter.

Million-dollar Advice $$

The final answer:
Report within 72 hours any POSSIBLE violation of EMTALA.

Million-dollar Advice $$

The final answer:
Accept a patient in transfer if your facility has the capacity, equipment and staffing to care for the patient’s needs.
Auditing EMTALA Compliance

Preliminary Survey Work
- Internal Control Questionnaire
- Obtain policies and procedures
- Inquire re: historical EMTALA investigations
- Request access to ED central log

Auditing EMTALA Compliance

- Request access to MD On-Call log
- Review current regulations
- Review current CMS interpretive guidelines
- Consult emtala.com
Auditing EMTALA Compliance

- Plan interviews with:
  - ED Nurses
  - ED Case Manager/Social Worker
  - ED Physicians
  - Internal Coordinator of State/Fed. Investigations
  - Access Center Nurses

Auditing EMTALA Compliance

- Plan interview questions
  - General questions
    - Perception of EMTALA compliance
    - Frequency of training
    - Perceived issues/concerns
  - ICQ results-based questions

Auditing EMTALA Compliance

- Develop audit program
  - Begin with template
  - Adjust according to ICQ/interview results
Auditing EMTALA Compliance

- Policies and Procedures
- Signage
- Bylaws
- ED Control and On-Call Logs
- Sampling
- Observation
- Education Records
- EMTALA Violations

Auditing EMTALA Compliance

- Common Findings:
  - Policies/procedures outdated
  - Staff education deficiencies
  - On-call non-responders not documented
  - Stability not well-documented at transfer
  - Suspect violations not always reported

Pending Changes to the Law

- Moving on-call responsibilities to the Provider Agreement section of the regulations.
- Potential extension of EMTALA to cover not-yet-stabilized inpatients.
- Updating call coverage requirements.

STAY TUNED!
EMTALA Internal Control Questionnaire

This information is being gathered as a preliminary step in the upcoming internal audit of EMTALA Compliance. Please complete the form and return to the auditor.

<table>
<thead>
<tr>
<th>No.</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>Contact Person</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Is required EMTALA signage posted in the emergency department?</td>
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<td>2</td>
<td>Are the following policies current and available for review?</td>
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<td></td>
<td>Records Retention Policy</td>
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<td></td>
<td>ED (and L&amp;D) Registration Policy</td>
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<td>Voluntary withdrawal (AMA) Policy</td>
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<td>EMTALA Policy, if standalone</td>
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<td></td>
<td>MD On-Call Policy and on-call lists</td>
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<td></td>
<td>ED Triage Policy</td>
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<td>ED and Hospital Transfer Policy</td>
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<td>ED Money Collection Policy</td>
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<td></td>
<td>Investigation and Reporting of Inappropriate Transfers</td>
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<td>3</td>
<td>Is a central log of patients seeking care available and retained?</td>
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<td>4</td>
<td>Is insurance/financial information ever collected before the Medical Screening Exam is provided?</td>
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<td>5</td>
<td>Is a list of specialist physicians on call available and retained?</td>
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<td>6</td>
<td>Is there a mechanism for internally reporting a suspected EMTALA violation?</td>
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<td>7</td>
<td>Have there been any EMTALA investigations of the hospital by any external body in the past year?</td>
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<td>8</td>
<td>Is a Physician Certification Form completed prior to every transfer out?</td>
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<td>9</td>
<td>Is a consent form completed prior to every transfer out?</td>
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<tr>
<td>No.</td>
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<td>10</td>
<td>Is EMTALA training provided to ED staff (nurses and MDs) and required at least annually?</td>
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<td>11</td>
<td>Is regular monitoring of EMTALA compliance performed?</td>
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<tr>
<td>12</td>
<td>Is the medical screening exam performed by MDs?</td>
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<tr>
<td>13</td>
<td>Is the medical screening exam ever performed by other than an MD?</td>
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<tr>
<td>14</td>
<td>Is a checklist or other mechanism used during transfers to facilitate compliance with EMTALA regulations?</td>
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</table>

Please return to Jean Lambert, Internal Audit as soon as possible and no later than _____________________________

805-2645
Please Complete this Form with the facts that are known to you. Once completed, please call or page Utilization Management.

Date of Completion of Fact Sheet

Name and Dept of Individual Completing Fact Sheet

Patient Name

MedRec#

Adm date

Room location

Transferring Facility

Transferring Physician

Diagnosis

Transferred from ED

Inpt

Other

please specify:

Receiving Physician

Receiving Service

Did a Froedtert Physician accept this Patient? Yes____ No_____ Name of Accepting Physician

If No, what are the circumstances?

Reason for Transfer to Froedtert

Additional Comments

Please check all that apply:

<table>
<thead>
<tr>
<th>Transfer not accepted by FH MD</th>
<th>Benefits of transfer didn’t outweigh risks</th>
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</thead>
<tbody>
<tr>
<td>Screening exam not provided</td>
<td>Delay in examination or treatment</td>
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<tr>
<td>Inappropriate mode of transfer</td>
<td>Screening exam inadequate (all resources of hospital not used)</td>
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<tr>
<td>Inappropriate equipment for transfer</td>
<td>Space and/or qualified personnel unavailable at Froedtert</td>
</tr>
<tr>
<td>On-call MD refused patient</td>
<td>MD Certification incomplete</td>
</tr>
<tr>
<td>On-call MD did not respond at all</td>
<td>Consent to transfer not signed by patient or representative</td>
</tr>
<tr>
<td>On-call MD refused to come in to examine patient</td>
<td>Patient inappropriately transferred while unstable</td>
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<tr>
<td>Medical Records not received</td>
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NOTE: Froedtert is required by Federal Law to report a substantiated EMTALA violation within 72 hours of awareness of it's occurrence.
# EMTALA Compliance Audit Program

## Audit Objective and Specific Steps

<table>
<thead>
<tr>
<th></th>
<th>Auditor</th>
<th>WP Reference</th>
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<tbody>
<tr>
<td><strong>A. Policies and Procedures</strong></td>
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</table>

**Objective:** To determine whether policies and procedures are current and designed to ensure that guidance is provided according to EMTALA law.

1. Review ED Triage Policy to ensure triage does not take the place of the medical screening exam.
2. Review ED (and L&D) registration policy to ensure that insurance and financial inquiry does not delay the medical screening exam.
3. Review ED voluntary withdrawal (AMA) policy to ensure patient condition is assessed and documented, and patient signs AMA form prior to departure.
4. Review ED Physician on-call policy to determine on-call expectation of specialists and that provisions have been made to manage patients in the absence of specialty physicians, when physicians are on call at more than one hospital, and when on-call physicians are in surgery.
5. Review ED Patient Transfer policy for the following:
   a. Patients are transferred upon request or when need higher level of care
   b. Receiving hospital accepts transfer prior to transferring patient
   c. Patient/representative consents to transfer
   d. Physician certifies benefits outweigh risks of transfer
   e. Patient is to be stabilized prior to transfer
   f. Transferring hospital responsible to arrange suitable transport.
   g. Appropriate medical records accompany patient upon transfer.
   h. Unstable patients transferred only when benefits outweigh risks
6. Review hospital policy for language regarding patients who present with emergency conditions at other than the emergency department.
7. Review hospital policy for management of transfer requests
   a. Hospital accepts transfer if has capacity, capability and equipment.
   b. Hospital must report suspected EMTALA violations.
   c. Determine if a process and/or form exists for reporting suspected EMTALA violations.
8. Review Record Retention policy for ED and On-Call Log retention period of at least 5 years.

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<tr>
<th></th>
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<tr>
<td><strong>B. Signage</strong></td>
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</table>

**Objective:** To determine whether appropriate signage is located in appropriate locations throughout hospital.

1. Signage must be posted in a place or places likely to be noticed by all individuals entering the ED and/or waiting for exam/treatment (entrance, admitting area, waiting room, treatment room).
2. Must specify the rights of individuals with emergency conditions and women and labor.
3. Must indicate whether the facility participates in the Medicaid program.
4. Must contain wording that is clear and simple and in language understandable by the population served.
C. **Bylaws**

**Objective:** To determine whether Medical Staff Bylaws specify delegation of Medical screening exam to discipline(s) other than Medical Staff; and define on-call physician responsibilities.

1. Review Medical Staff Bylaws to determine if the medical screening examination is delegated.
2. Review Bylaws to determine the extent to which physician on-call responsibilities are defined. On-call physicians are expected to respond, examine and treat patients with emergency medical conditions.

D. **ED Central Log & MD On-Call Log**

**Objective:** To determine the completeness of the ED Central Log and MD On-Call Log.

1. Review the ED Central Log for the audit review period for completeness; observe documentation of patient name, other identifier(s), date and time of admission, date and time of discharge, disposition: refused treatment, was refused treatment, transferred, admitted and treated, stabilized and transferred or discharged.
2. Further review the ED Central Log for gaps and/or missing information.
3. Review the MD On-Call Log for the audit review period for completeness.

E. **Sampling**

**Objective:** To determine compliance with EMTALA patient transfer requirements.

1. Obtain a random sample (size determined by institutional particulars) of patient medical records for patients transferred from and to the hospital during the audit review period. Review records for the following documentation:
   a. Results of medical screening exam
   b. Documented acceptance of transfer by receiving hospital
   c. Fully executed patient consent
   d. Fully executed physician certification
   e. Documentation of vital signs just prior to transfer
   f. Notation of type of transport: BCLS, ACLS
   g. Notation/copy of medical records sent with patient upon transfer
   h. Arrangements made for records not available at time of transfer

F. **Observation**

**Objective:** To determine whether delays in Medical Screening Exam occur due to financial inquiry.

1. Observe sample of ED patient transactions to determine if delays occur.
<table>
<thead>
<tr>
<th>EMTALA Compliance Audit Program</th>
<th>Auditor</th>
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<tbody>
<tr>
<td><strong>G. Education records</strong></td>
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<tr>
<td><strong>Objective:</strong> To determine frequency and completeness of physician and emergency department staff education.</td>
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<tr>
<td>1. Obtain prior 2 years ED physician and ED staff member EMTALA education records.</td>
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<td>2. Assess education records for completeness and reasonable frequency.</td>
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<tr>
<td><strong>H. EMTALA Violations</strong></td>
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<td><strong>Objective:</strong> To assess history of hospital EMTALA violations and suspected violations reported.</td>
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<tr>
<td>1. Determine number and nature of hospital EMTALA violations that have been investigated by external authorities within the audit review period. Note corrective actions taken.</td>
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<tr>
<td>2. Determine the number of suspected EMTALA violations that have been reported to external authorities within the audit review period.</td>
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<tr>
<td>3. Review the ‘Suspected EMTALA Violation’ documents submitted during the audit review period for completeness.</td>
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Author: Jean Lambert; 2008