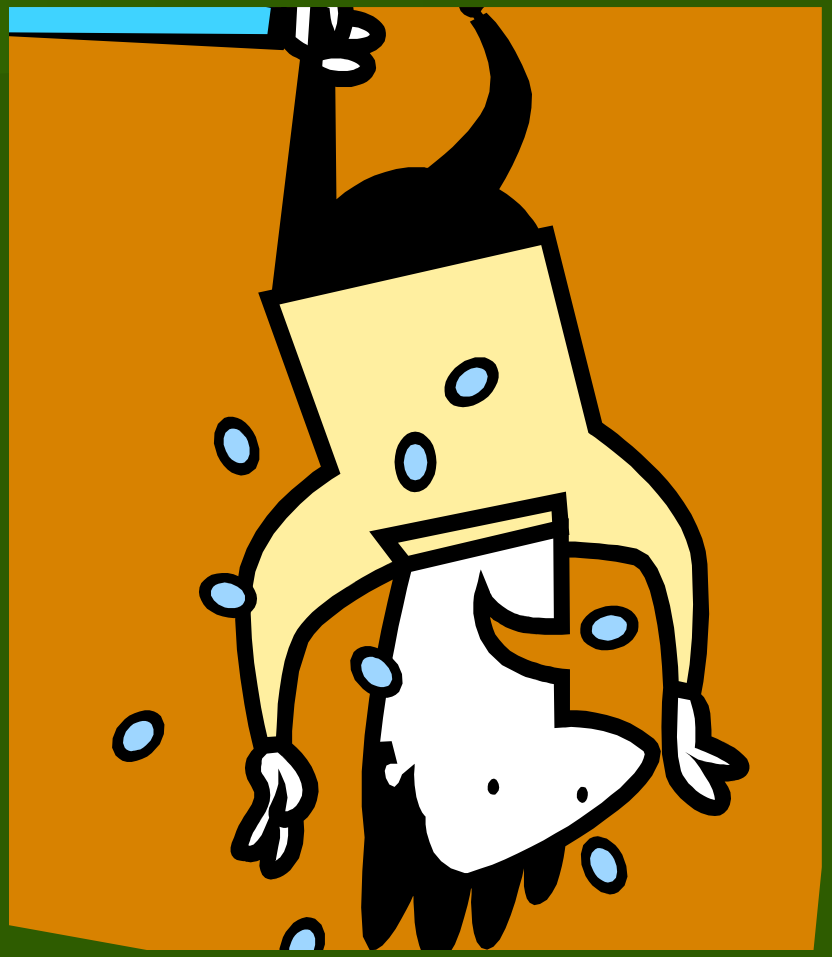
Emergency Medical Treatment and Labor Act (EMTALA) Compliance

Avera eCare

July 17, 2019

Penalties for EMTALA Violations

- Small Hospital (<100 beds): up to $25,000 for each violation
- Large Hospital (≥100 beds): up to $50,000 for each violation
- Physician: up to $50,000 for each violation



WHAT IS REQUIRED

- Applies to hospitals that participate in Medicare, AND that have any emergency department (ED).
- Must provide a Medical Screening Exam (MSE) to determine if the patient is in an emergency medical condition (EMC) and if so must be provided stabilizing treatment or transfer.
- Provided to any person who comes to the ED requesting emergency services.

Dedicated Emergency Department

- Department or facility of a hospital that meets at least one of the following requirements, regardless of whether it is located on the hospital's campus:
  - The DED is licensed by the State;
  - DED is held out to the public (by name, posted signs, advertising or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; OR
  - 1/3 of all outpatient visits are for treatment of EMCs on an urgent basis without requiring a previously scheduled appointment.
- Includes unscheduled ambulatory patients to units (such as labor & delivery, and psychiatric units) where patients are routinely evaluated and treated for EMCs.

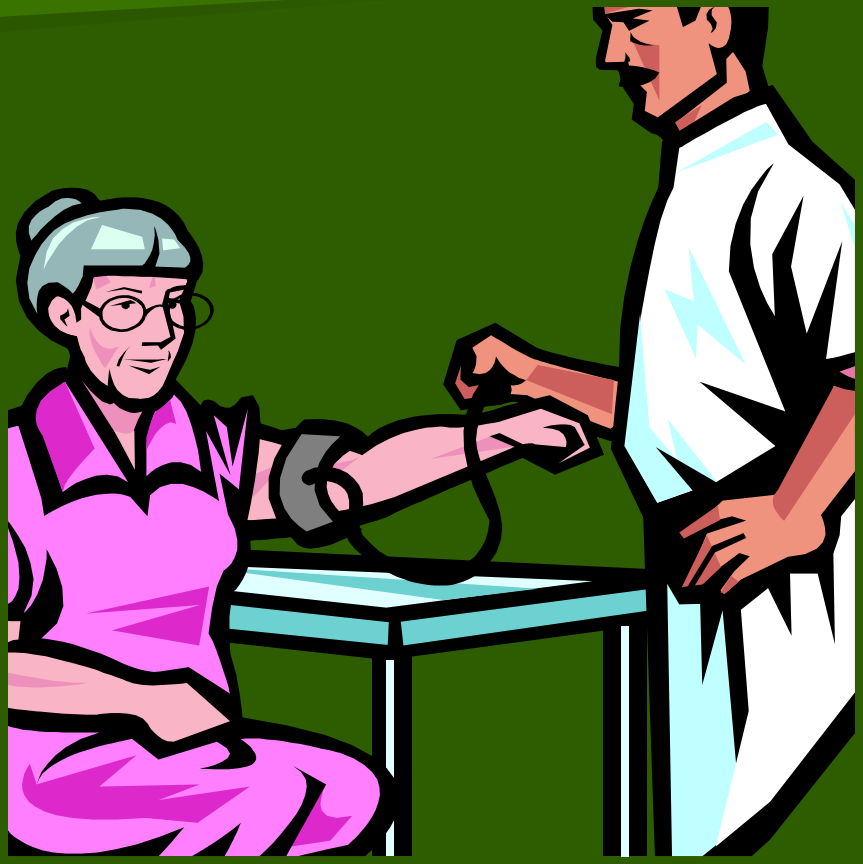
Presents on Hospital Property

- Main hospital campus that is the "physical area immediately adjacent to the provider's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings" including the parking lot, sidewalk, and driveway.
- Excludes physician offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare, or restaurants, shops or other nonmedical facilities.

What About Clinics?

- On-campus provider-based entities (such as clinics) are not subject to EMTALA.
- THEREFORE, it would be INAPPROPRIATE to move individuals to these facilities for a MSE or stabilizing treatment under the act.
- Need very good policies and procedures for how to handle patients that present, unscheduled, to the provider-based clinics.

Medical Screening Exam



- Must be made within the capability of hospital's ED, including ancillary services routinely available to the ED
- Must determine whether an EMC exists
- Medical assessment and mental health assessment when warranted

Emergency Medical Condition

- A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances and/or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in:
  - Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, or
  - serious impairment to bodily functions, or
  - serious dysfunction of any bodily organ or part

Emergency Medical Condition (Cont'd)

- With respect to a pregnant woman who is having contractions:
  - That there is inadequate time to effect a safe transfer to another hospital before delivery, or
  - that transfer may pose a threat to the health or safety of the woman or the unborn child.

Stabilized and Transfer

- Stabilized means:
  - No material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual;
- Transfer means:
  - The movement of an individual outside the hospital at the direction of a person affiliated with the hospital, the term includes discharge.

Stabilizing Treatment (489.24(d)(1-2))

- (1) *General.* Subject to the provisions of paragraph (d)(2) of this section, if any individual (whether or not eligible for Medicare benefits) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—
  - (i) Within the capabilities of the staff and facilities available at the hospital, for further medical examination and treatment as required to stabilize the medical condition.
  - (ii) For transfer of the individual to another medical facility in accordance with paragraph (e) of this section.
- (2) *Exception: Application to inpatients.* (i) If a hospital has screened an individual under paragraph (a) of this section and found the individual to have an emergency medical condition, and admits that individual as an inpatient in good faith in order to stabilize the emergency medical condition, the hospital has satisfied its special responsibilities under this section with respect to that individual.
  - (ii) This section is not applicable to an inpatient who was admitted for elective (nonemergency) diagnosis or treatment.
  - (iii) A hospital is required by the conditions of participation for hospitals under part 482 of this chapter to provide care to its inpatients in accordance with those conditions of participation.

Stabilizing Treatment – Patient Refuses (489.24(d)(3))

- (3) *Refusal to consent to treatment.* A hospital meets the requirements of paragraph (d)(1)(i) of this section with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) does not consent to the examination or treatment. The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of the person acting on his or her behalf). The written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.

Transfers (489.24(e))

- Hospital may not transfer the individual unless:
  - the individual, after being informed of the hospital's obligations under EMTALA and the risks of transfer, makes a request in writing to transfer anyway; or
  - physician certifies that the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer.

Transfers (489.24(e))

- (2) A transfer to another medical facility will be appropriate only in those cases in which:
  - (i) The transferring hospital provides medical treatment within its capacity that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;
  - (ii) The receiving facility—
    - (A) Has available space and qualified personnel for the treatment of the individual; and
    - (B) Has agreed to accept transfer of the individual and to provide appropriate medical treatment;

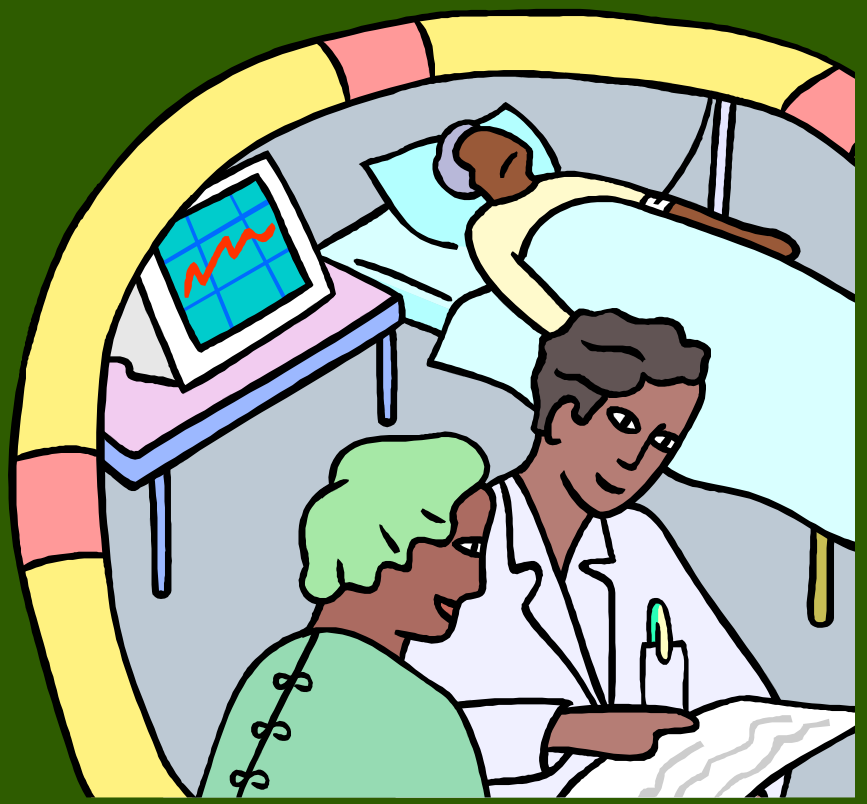
Transfers Cont'd (489.24(e))

- (iii) The transferring hospital sends to the receiving facility all medical records (or copies thereof) related to the emergency condition which the individual has presented that are available at the time of the transfer, including available history, records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, results of diagnostic studies or telephone reports of the studies, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) required under paragraph (e)(1)(ii) of this section, and the name and address of any on-call physician (described in paragraph (g) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment. Other records (e.g., test results not yet available or historical records not readily available from the hospital's files) must be sent as soon as practicable after transfer; and
- (iv) The transfer is effected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer.

- (3) A participating hospital may not penalize or take adverse action against a physician or a qualified medical person described in paragraph (e)(1)(ii)(C) of this section because the physician or qualified medical person refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized, or against any hospital employee because the employee reports a violation of a requirement of this section.

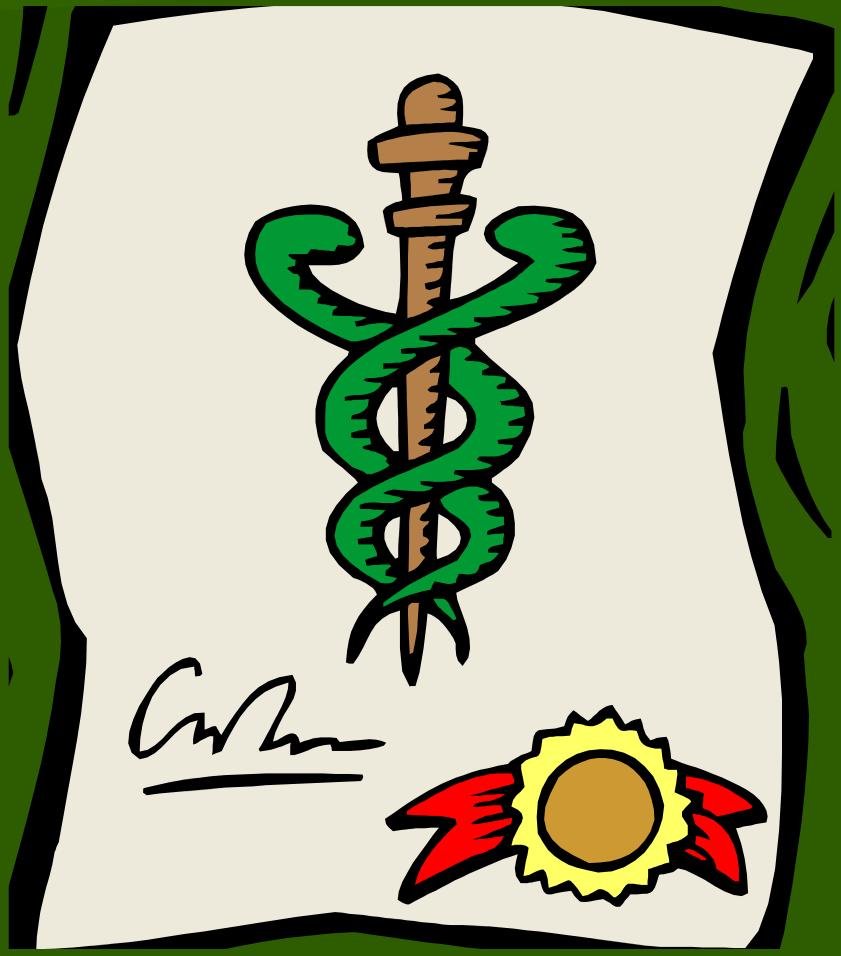
Responsibilities when Emergency Medical Conditions Exists

- Provide necessary treatment to stabilize the EMC; OR
- Provide an appropriate transfer if the hospital does not have the capability (i.e., does not offer the service) or the capacity (i.e., does not have the appropriate personnel, equipment, beds) to furnish the stabilizing treatment.



No Delay

- Hospital may NOT delay the medical screening examination, stabilizing treatment, or appropriate transfer to inquire about an individual's method of payment or insurance status.



On-call Coverage

- Hospital must maintain on-call list of physicians on its medial staff in a manner that best meets the needs of the hospital's patients who are receiving services required under this section in accordance with the resources available to the hospital, including the availability of on-call physicians.
- Policies must state:
  - What to do when a particular specialty is not available or the on-call physician cannot respond because of circumstances beyond the physician's control; AND
  - How to meet the needs of patients with EMCs if the hospital elects to permit on-call physicians to schedule elective surgery during the time that they are on call or to permit on-call physicians to have simultaneous on-call duties.

On-call List

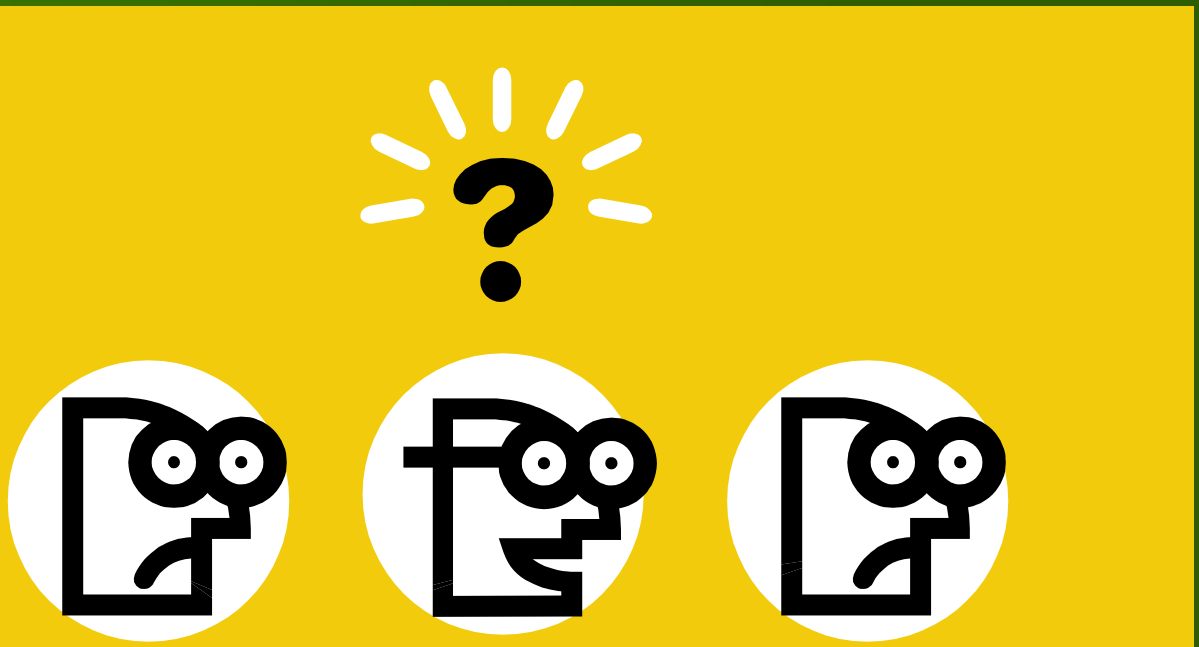
- Hospitals must maintain a list of physicians who are on call to evaluate ED patients.
- List must include physician's name and NOT name of practice.
- This list must include specialists.
- Hospitals are responsible to ensure that on-call physicians respond within a reasonable time.
- Failure to show up or refusal means hospital *and* physician may be in violation of EMTALA.

On-call and On Campus

- If physician office is on hospital owned property or campus, patient may go to physician office when medically appropriate.
- Surveyors to determine if sending patients to on-campus clinic is appropriate and if all people with same condition are moved regardless of ability to pay, and there is a bona fide medical reason to move the patient and appropriate medical personnel accompany the patient.

On call – Who Decides

- Decision about whether to have on-call physician respond is decided by ED physician or person conducting the MSE.
- If presence of on-call physician is requested by ED physician or medical screener, then on-call physician must come in.
- After being requested to come to the ED, failure to present to ED may be a violation of EMTALA
- If on-call physician disagrees with ED physician, show up anyway and resolve the disagreement later.



It's QUESTION TIME!!