EMTALA: A Psychiatrist’s Perspective

Richard L. Elliott, MD, PhD, FAPA
Professor and Director, Medical Ethics
Mercer University School of Medicine
Adjunct Professor
Mercer University School of Law

Goals

- Medical-psychiatric co-morbidity and the importance of screening and stabilization
- Brief history of EMTALA/COBRA
- Essential requirements
- Behavioral emergencies in the EC
- Medical screening

Medical-Psychiatric Co-morbidity

- Felker *Psychiatric Services 47:1356-1363,1996*
- *Reviewed 66 papers on medical-psychiatric co-morbidity*
- *For psychiatric patients:*
  - *50% have medical condition warranting further evaluation or treatment*
  - *35% have previously unknown medical condition*
  - *21% have medical condition causing or exacerbating mental symptoms*
  - *Death rate more than twice general population*

Why Are Psychiatric Patients Physically Sicker?

- Decreased access to care
  - Homeless or variable housing
  - Poor understanding of need for treatment
  - Fear of health system
  - Reluctance of providers to care for MH patients
    - Stigma
    - Indigent
    - Need to coordinate care with MH system
    - Failure to recognize emergence of medical symptoms in a seriously psychiatrically person
- Malnutrition
- Substance abuse – 20-50%
- Effects of psychotropic medication

Medical Conditions Presenting as Psychiatric Emergencies

- Patients are brought to Emergency Departments with "behavioral emergencies"
  - Psychotic
  - Suicidal
  - Homicidal
- But what appears to be purely psychiatric may be caused or exacerbated by a medical condition
  - Substances
    - Intoxication OR withdrawal
  - Malnutrition
    - Wernicke's encephalopathy
  - Tumor, endocrine disorder, seizures, etc.
  - Medications
- Patient sent to public psychiatric facility without stabilization may die or suffer irreversible harm
- Costs to state for care high

Background to EMTALA/COBRA

- 1980 – man with knife in back – hospital refuses to remove because he can’t pay
- 13 year old boy with crush injury to leg, transferred to another hospital, causing delay, despite available surgical services
- Pregnant woman in labor transferred to hospital 200 miles away

1985

- Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) signed into law 1986
- Emergency Treatment and Active Labor Act (EMTALA)
- Anti-dumping law

EMTALA/COBRA

- Applies to hospitals receiving federal funds (Medicare)
- Three basic requirements
  - Medical Screening Exam (MSE)
  - Stabilization of emergency medical conditions
  - Appropriate transfer if needed
- Additional provisions
  - Whistleblower protection
  - Penalties for noncompliance

EMTALA Screen

- If any individual comes to the emergency department requesting exam or treatment or
  - request is made on the individual's behalf for examination or treatment for a medical condition or
  - Prudent layperson would believe an exam or treatment is needed
- Hospital must provide for an appropriate medical screening examination (MSE) by a Qualified medical provider . . . to determine whether or not an emergency medical condition exists

Emergency Medical Condition

- ‘‘Emergency medical condition’’ means a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in:
  - (i) placing the health of the individual in serious jeopardy,
  - (ii) serious impairment to bodily functions, or
  - (iii) serious dysfunction of any bodily organ or part
- (References to pregnant women not included in this presentation)

Medical Screening Examination

- *"An MSE is the process required to reach, with reasonable clinical confidence, the point at which it can be determined whether the individual has an EMC or not. An MSE is not an isolated event. It is an ongoing process that begins, but typically does not end, with triage"*
- *CMS 3/21/08* **S&C-08-15** *Guidelines*

EMTALA Stabilize

- If an emergency medical condition exists, must provide:
  - (A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or
  - (B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

“To Stabilize”

- The term “to stabilize” means, with respect to an emergency medical condition means to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that **no material deterioration of the condition is likely to result from or occur during the transfer** of the individual from a facility.

EMTALA Transfers

- An appropriate transfer to a medical facility is a transfer—
- (A) in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and:
- (B) in which the receiving facility has
  - (i) available space and qualified personnel for the treatment of the individual, and
  - (ii) agreed to accept transfer of the individual and to provide appropriate medical treatment;
- (C) in which the transferring hospital sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer

- What about patients sent from Emergency Departments under state commitment provisions to public psychiatric facility?

EMTALA and Commitment

- Hospitals located in those States which have State/local laws that require 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. If, after conducting the MSE and ruling out an EMC (or after stabilizing the EMC) the sending hospital needs to transfer an individual to another hospital for treatment, it may elect to transfer the individual to the hospital so designated by these State or local laws. Hospitals are also 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 requiring transfer of certain individuals to certain facilities is not a defense to an EMTALA violation for failure to provide an MSE or failure to stabilize an EMC therefore hospitals must meet the federal EMTALA requirements or risk violating EMTALA.

EMTALA and Commitment Laws

- Hospitals are not relieved of their EMTALA obligation to screen, provide stabilizing treatment and or an appropriate transfer because of prearranged community or State plans that have designated specific hospitals to care for selected individuals

EMTALA and Civil Commitment

- “Sandra Sands of the Office of the Inspector General confirmed that transferring psychiatric patients under community protocols can be an EMTALA violation in some cases.”

- FINAL REPORT of The Emergency Medical Treatment and Labor Act Technical Advisory Group To the Secretary U.S. Department of Health and Human Services 2007

Accepting Hospital Responsibility

- A participating hospital that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as identified by the Secretary in regulation) shall not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

42 CFR 489.20

- (m) In the case of a hospital, to report to CMS or the State survey agency any time it has reason to believe it may have received an individual who has been transferred in an unstable emergency medical condition from another hospital in violation of the requirements of Sec. 489.24(e).
- (r) In the case of a hospital (including both the transferring and receiving hospitals), to maintain
  - (1) Medical and other records related to individuals transferred to or from the hospital for a period of 5 years from the date of the transfer;

Mandatory Reporting

- CMS Surveyors will review receiving hospitals records to determine whether:
  - The hospital had agreed in advance to accept the transfers;
  - The hospital had received appropriate medical records;
  - All transfers had been effected through qualified personnel, transportation equipment and medically appropriate life support measures; and
  - The hospital had available space and qualified personnel to treat the patients.

Penalties to Hospitals

- (A) A participating hospital that negligently violates a requirement of this section is subject to a civil money penalty of not more than $50,000 (or not more than $25,000 in the case of a hospital with less than 100 beds) for each such violation.
- Loss of participation (Medicare certification) for repeated or flagrant violations

Penalties to Physicians

- (i) signs a certification under subsection (c)(1)(A) of this section that the medical benefits reasonably to be expected from a transfer to another facility outweigh the risks associated with the transfer, if the physician knew or should have known that the benefits did not outweigh the risks, or
- (ii) misrepresents an individual's condition or other information, including a hospital's obligations under this section,
- is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is gross and flagrant or is repeated, to exclusion from participation in this subchapter and State health care programs.

Financial loss to other medical facility

- Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for financial loss, under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

EMTALA and Commitment

- Problem – an acutely psychotic patient is sent involuntarily to a state hospital
- Emergency Department perspective
  - It's a psychiatric patient, let the psychiatric hospital take care of him/her
- State hospital perspective
  - Lack of capabilities in staff and equipment to screen and stabilize many medically ill patients

Questions

- How well do hospital staff understand EMTALA?
- Are receiving hospitals monitoring and documenting transfers?
- How extensive are the problems of
  - Admission of medically unstable patients?
  - Inappropriate transfers?
    - Inadequate MSE
    - Failures to stabilize
    - Transfers without adequate information and consents
  - Admission of “committed” medically inappropriate patients?
- When transfers are inappropriate, what steps are being taken?
  - To report
  - To educate
  - To recoup costs

Recommendations

- Medical Directors Council
  - Review issues with medically unstable or inappropriate transfers
    - Statewide surveys , collect problematic cases
  - Survey public mental hospital MDs for understanding of EMTALA
  - Review relationship between ER transfers and commitment laws
  - What constitutes “medical clearance” or “medical screening?”
  - Consult with CMS Technical Advisory Group on work around behavioral emergencies, commitment laws, and transfers to public facilities
  - Develop educational materials for EC physicians and administrators
- Develop brief educational program and materials for Probate Judges
  - EMTALA requirements
  - Risk of involuntary hospitalization of medically unstable patients
    - To patient, hospital, physician
  - Medical instability is relative to resources of receiving hospital