



What Can Peer Review Do for You?

CASE 6: SURVIVING EMTALA INVESTIGATIONS: ENSURING AND PROVING COMPLIANCE

▲ **WHAT:** In the last few years, the Centers for Medicaid and Medicare (CMS) has increasingly set its sights on investigating Emergency Departments (EDs) for potential violations of the Emergency Medical Treatment and Labor Act (EMTALA). MDReview has observed that CMS seems to be blurring the distinction between potential EMTALA violations and standard of care/malpractice issues, leading to citations that may not be legitimate. If an EMTALA violation has occurred, corrective action is clearly warranted to ensure requirements are met going forward. But even when no EMTALA violation has occurred, the investigation process can impose significant time and cost burdens on hospitals. And if hospitals are not well prepared to show exactly how they met EMTALA requirements, the consequences can include crippling fines and loss of Medicare participation. The unfortunate reality is that in the current environment, the burden of proof is upon hospitals to prove compliance.

MDReview's peer review team can help hospitals successfully respond to EMTALA investigations by providing expertly written evaluations of individual cases. Prepared by leading board-certified emergency physicians, our objective, thorough reports include detailed analysis based on reviewers' expert knowledge as well as published literature and guidelines. If an EMTALA breach has occurred, a review provides critical information the facility can translate into staff education and improvement of care. If EMTALA requirements have been met, the review provides the definitive support facilities need to clearly demonstrate their compliance.

▲ **WHAT CONSTITUTES AN ADEQUATE MEDICAL SCREENING EXAM UNDER EMTALA REGULATIONS?:**

Enacted in 1986, EMTALA is the federal law that requires Emergency Departments (EDs) to provide screening and stabilization for any person requesting evaluation, regardless of ability to pay. Specifically, it prohibits hospitals from turning patients away based on lack of resources to pay for care, and requires that they perform a medical screening

examination (MSE) to determine whether an emergency medical condition (EMC) exists. If an EMC exists, then the facility is required to stabilize patients within its capabilities and/or transfer the patient to an outside facility for higher level of care.

According to Donald Lefkowitz, MD, Medical Director at MDReview and former Director, Rose Medical Center Emergency Department, "EMTALA is not, and was never intended to be, a malpractice statute. EMTALA requires EDs to screen each patient in the same way that other patients with the same or similar conditions would be screened at that facility. A violation of EMTALA may be a valid claim if the facility fails to perform a reasonable MSE that is equivalent to what it would provide to other patients. But if concerns involve misdiagnosis or inadequate treatment, these would fall under the purview of the state malpractice arena."

Dr. Lefkowitz also notes that the care provided to patients may clearly meet EMTALA requirements even if a patient goes on to have a poor outcome—a principle that hospitals may need to explicitly address during investigations. In two seminal EMTALA cases, *Cleland v. Bronson Health Care Group* and *Gatewood v. Washington Health Care Corporation*, the courts held that appropriate means "care similar to care that which would have been provided to any other patient... and that what is appropriate is determined "not by reference to particular outcomes, but instead by reference to a hospital's standard screening procedures." Other court circuits have concurred, noting "The hospital satisfies the requirements of EMTALA if its' standard screening procedures apply uniformly to all patients with similar circumstances." Over time, the federal courts have held broadly that there are two components to an appropriate MSE. First, the examination must be reasonably calculated to identify critical medical conditions, and second, the same level of screening must be uniformly provided to all patients who present with substantially similar complaints, without discrimination.

▲ **IS YOUR ED AT RISK?:** Recent trends suggest that no CMS participating facility is immune to EMTALA claims; the following case from early 2017 illustrates the confusion and challenges commonly at play. A healthy, mid-30s male presented to an ED for evaluation of chest pain, nausea, vomiting, and diaphoresis. He received a prompt workup including appropriate labs, a chest X-ray, and an electrocardiogram. He had no risk factors for coronary artery disease, pulmonary embolism, or dissection. His symptoms improved during four hours of observation and monitoring and he was discharged with a diagnosis of chest wall pain and pleurisy, and with instructions for next day follow-up for further care. The following day, he expired from a ruptured thoracic aortic aneurysm before he could follow up. CMS cited the ED for an EMTALA violation on the premise that the department had failed to perform an adequate MSE because no chest CT was performed.

Review of the case, however, concluded that the facility and its staff clearly did comply with the intent of EMTALA requirements. Having carefully evaluated the entire medical record, MDReview's expert found the team had performed an MSE that was both appropriate for the patient's clinical presentation and equivalent to what it routinely provided to other similarly presenting patients, without prejudice or discrimination. The report stated that the patient "was triaged

promptly, getting an electrocardiogram within 10 minutes, a careful ED physician exam within 15 minutes of arrival..." After detailing the patient's vital signs, history, clinical course during his ED stay, and test results, the reviewer concluded that while his fatal aneurysm was a rare and unexpected tragic outcome, the team's failure to detect it did not reflect an EMTALA violation. The reviewer did identify some problems with the department's documentation, as well as elements of care that could have been improved. However, these shortcomings in care reflected decisions in clinical judgment rather than failure to meet EMTALA requirements. The report explained, "The issue in an EMTALA case is not whether a physician should have detected an emergency condition, but whether he or she provided appropriate screening and stabilization of any emergency condition the physician reasonably perceives the patient to have. In this circumstance, that burden was clearly met."

Clearly, the ability to distinguish EMTALA-related violations from potential deviations from standard of care is critical to successfully navigating a CMS investigation. For hospitals faced with an EMTALA investigation, MDReview is a trusted ally in discerning whether a problem has in fact occurred, providing education and resources to help medical staff understand their EMTALA responsibilities, and preparing an optimal response.

FOR MORE INFORMATION:

▲ Please visit our website at www.md-review.com

About MDReview

MDReview provides exceptional external peer review focusing on integrity, objectivity, sensitivity, confidentiality, and timeliness to provide clients with an incomparable resource. MDReview is committed to applying its expertise to meet the individual needs of each client. With a national reach to a diverse client base in all 50 states, MDReview is the standard for excellence in peer review. MDReview is located in Denver, Colorado.



141 Union Boulevard
Suite 120
Lakewood, CO 80228

TOLL FREE: 866.725.1784
FAX: 720.292.5761

www.md-review.com