

#308
Do It Yourself
EMTALA Auditing
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Seattle—the hype:



Seattle—the reality:



LEARNING OBJECTIVES

- Understand the background and basics of EMTALA
- Learn how to prepare, conduct and report EMTALA audits
- Develop an auditing checklist
- Foster relationships with key leaders
- Focus on the right messages
- Plan for follow up audits

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DISCLAIMERS, HOUSEKEEPING

- I'm not an attorney, but I was a primary EMTALA contact at a four-hospital system from 2004 - 2015
- EMTALA Case Law notwithstanding, there is current debate at CMS about whether EMTALA survives IP admission
- Duty to report—only applies to patients who came from another hospital
- ED Wait Time Clocks—not such a good idea

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EMTALA—the law



EMTALA—The Law

- EMTALA—The Emergency Medical Treatment and Active Labor Act
- Part of COBRA, originally passed in 1986 in response to concerns of “patient dumping”
- Enforced by CMS and OIG
 - CMS can terminate the Hospital's Medicare agreement
 - The OIG has exclusion authority
 - Civil Monetary Penalties (CMP) on both the hospital and a “responsible physician” up to \$50,000 per violation
 - Patients may bring civil lawsuits for damages
- Very specific meanings/definitions
- Requires 68-page State Operations Manual to interpret



EMTALA APPLIES TO:

- Participating Medicare Hospitals
 - Hospitals with Emergency Departments
 - Hospital-owned ground or air ambulance services
 - Certain Provider-based Urgent Care Centers

*...a dedicated emergency department is defined as meeting one of the following criteria regardless of whether it is located on or off the main hospital campus:
The entity: (1) is licensed by the State in which it is located under applicable State law as an emergency room or emergency department; or (2) is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions (EMC) on an urgent basis without requiring a previously scheduled appointment; or (3) during the preceding calendar year, (i.e., the year immediately preceding the calendar year in which a determination under this section is being made), based on a representative sample of patient visits that occurred during the calendar year, it provides at least one-third of all of its visits for the treatment of EMCs on an urgent basis without requiring a previously scheduled appointment.




EMTALA—the basics:

- A person who “comes to the emergency department” for examination or treatment for a medical condition must receive a “medical screening examination” to determine whether an “emergency medical condition” exists
- If there is an emergency medical condition, the hospital must provide either
 - Further medical examination and treatment to “stabilize” the medical condition, or an
 - “Appropriate transfer”




Getting Your Audit Organized

Obtain copies of:

- EMTALA policies and procedures
- Medical Staff By-Laws
- On-Call policy/procedures & on-call list
- ED Transfer form
- Transfer policies
- Registration scripting
- Staff EMTALA Training Materials



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Getting Your Audit Organized

Get access (user ID and password, and any training needed) to all pertinent systems

- EHR
- ED-specific system(s)

Arrange meeting with ED Nurse Manager/Director

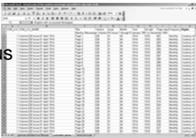


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Getting Your Audit Organized

Request data—import into your own auditing xls

- Patient name, DOB, MRN
- Patient encounter ID
- Patient status
- Reason for transfer
- Destination facility
- Mode of transportation
- Disposition
- Any other fields that will help...



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The Audit--By-Laws

Who can perform the MSE?




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The Audit—ED Work Flow

Meet with the ED Nurse Manager, ED Director, or ED Medical Director

- Have them walk you through the ED experience
- Note signage—is it adequate? In the appropriate languages? Wording matches the CMS requirements?
- Diagram the ED work flow
- Let them know you'll follow up after you've audited the encounters



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The Audit—Encounters

- Set aside time to audit encounters—it can be a long process
- Establish the sample size
- EMTALA Log must contain Name, Date, Time, Disposition
- Determine which aspects will you audit—Transfers only? LWBS? LAMA? Lbfd? LOL? OMG?
 - You may want to focus on cases where the patient left early, to determine if there is a pattern warranting further investigation
 - Hourly rounding in ED Lobby is best practice
 - Make sure you document the number of times you looked for patients who don't respond to calls in lobby



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The Audit—Encounters

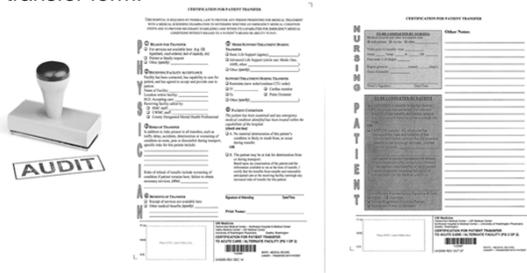
- You may find that you have to systematically search all the records—including discharge notes, progress notes, external documentation, etc...
- Review On-call lists—
 - do they reflect coverage of services available to inpatients?
 - Individual Practitioner Names?
 - Do changed lists retain both the original MD and replacement doc?
 - Are the lists saved for five years?
 - Is there a community call plan agreement of record, and was CMS notified in advance?



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The Audit—Encounters

Auditing transfers is easier if they use a good transfer form:




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The Audit--Summary

- Share preliminary data with ED Nurse Manager and Director, HIM Director and any others whose departments will be impacted
- Have them propose corrective actions and deadlines
- Draft the report to include your findings and the proposed corrective actions
- Route through appropriate channels for final review
- Publish final report as PDF, counter-signed by Compliance Officer; specify date of next audit

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The Audit Report

AUDIT REPORT

Note: This form must be filled out by the provider for each visitation as well as "EMTALA".

EMTALA Purpose: This form is to be filled out by the provider for each visitation as well as "EMTALA". This means that if you are not a provider, you should not fill out this form.

Background: The purpose of this form is to provide information to the state regarding the provider's compliance with EMTALA. This information is used for the state's annual report to Congress.

Section 1:

- A. **EMTALA Compliance:**
 - 1. Has the provider complied with EMTALA for the visitation?
 - 2. If not, please provide a brief explanation of the provider's non-compliance.
- B. **Other Compliance:**
 - 1. Has the provider complied with other applicable laws and regulations?
 - 2. If not, please provide a brief explanation of the provider's non-compliance.

Section 2:

- A. **Other Compliance:**
 - 1. Has the provider complied with other applicable laws and regulations?
 - 2. If not, please provide a brief explanation of the provider's non-compliance.

Section 3:

- A. **Other Compliance:**
 - 1. Has the provider complied with other applicable laws and regulations?
 - 2. If not, please provide a brief explanation of the provider's non-compliance.

Section 4:

- A. **Other Compliance:**
 - 1. Has the provider complied with other applicable laws and regulations?
 - 2. If not, please provide a brief explanation of the provider's non-compliance.

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Resources

EMTALA Regulations: http://www.ssa.gov/OP_Home/ssact/title18/1867.html

State Operations Manual:
https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_v_emerg.pdf

AHLA EMTALA Checklist:
[https://www.healthlawyers.org/Publications/Journal/Documents/Vol%2038%20Issue%203/JHL_vol38_no3_Kahn-Kohmann_Kesman\(EMTALA_Compliance\).pdf](https://www.healthlawyers.org/Publications/Journal/Documents/Vol%2038%20Issue%203/JHL_vol38_no3_Kahn-Kohmann_Kesman(EMTALA_Compliance).pdf)

Provider-based Urgent Care Centers are subject to EMTALA (page 54)
<http://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/downloads/CMS-1063-F.pdf>

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Questions?

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