

Report on Medicare Compliance Volume 28, Number 25. July 15, 2019 **CMS: With EMTALA, ED Doctors Can Do Psych MSE; Transfers May Be OK Despite Open Bed**

By Nina Youngstrom

In new guidance on the Emergency Medical Treatment and Labor Act (EMTALA) and psychiatric hospitals, CMS explains they have to give mental health and medical conditions equal footing, but they won't get cited for noncompliance if emergency department (ED) physicians screen for mental health conditions.

"It is within the scope of practice for ED physicians and practitioners to evaluate patients presenting with mental health conditions, same with any other medical, surgical, or psychiatric presentation," according to answers to frequently asked questions (FAQs) posted July 2. The FAQs were directed to state surveyors, who evaluate hospital compliance with EMTALA on behalf of CMS.

"CMS wants to reiterate that nothing is different when it's psychiatric or neurology or cardiology," says attorney Holley Lutz, with Dentons in Washington, D.C.

EMTALA requires both a medical and a psychiatric medical screening exam (MSE) when patients show up at the hospital with a mental health condition (e.g., suicidal ideation), says Rebekah Stewart, chief ethics and compliance officer at Diamond Healthcare in Richmond, Virginia. That's always been the case, but CMS is making it "crystal clear" because there has been "confusion and misconception" around this requirement, she says. "There could be an underlying medical condition affecting their psychiatric condition." That should resonate with freestanding psychiatric hospitals that may think they're off the EMTALA hook because they don't have a dedicated emergency room and don't provide medical services in the same way as an acute-care hospital, Stewart says.

"EMTALA requires hospitals to perform medical screening examinations within their capabilities. If the psych hospital doesn't have the ability to perform a comprehensive medical screening exam (or provide stabilizing treatment), but the screening exam it performs indicates that the patient may have an emergency medical condition, the hospital is required to arrange an appropriate transfer to a facility for further evaluation and treatment," the FAQs stated. "The hospital is expected to use its resources to perform the exam and provide care within its capabilities prior to transfer."

Under EMTALA, hospitals must give all patients who show up in the emergency room an MSE regardless of their ability to pay and stabilize patients with an emergency medical condition (EMC) within the hospital's capacity and capability. Patients may be transferred if hospitals lack the capacity to treat them, and receiving hospitals must accept patients unless they lack the capacity to treat them. Problems with EMTALA compliance in the psychiatric arena have led to noteworthy civil monetary penalty settlements with the HHS Office of Inspector General ("Psych Cases Test EMTALA Mettle; Hospital Settles Case Over Patient Sent to Jail," RMC 25, no. 12; "In Largest EMTALA CMP Case, Patients Stayed in ED Although Hospital Had Psych Unit," RMC 26, no. 26).

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