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Hospital Settles EMTALA Case Over Suicidal Patient With Insurance

By Nina Youngstrom

Park Royal Hospital in Fort Myers, Florida, agreed to settle allegations of violating the Emergency Medical Treatment and Labor Act (EMTALA) when it refused to accept the transfer of a suicidal patient because the patient's insurance was out of network. The hospital agreed to pay $52,414, according to its civil monetary penalty settlement with the HHS Office of Inspector General.

That's one of two recent EMTALA settlements in which the hospitals allegedly violated basic EMTALA requirements, and both involved transfers, an attorney says.

Under EMTALA, hospitals must give all patients who show up at the emergency room a medical screening exam (MSE) regardless of their ability to pay, and stabilize them if they present with an emergency medical condition (EMC). Patients may be transferred if hospitals lack the capacity or capability to treat them, and receiving hospitals must accept transfers unless they lack the capacity or capability.

Park Royal, which has specialized psychiatric capabilities, refused the transfer of the patient from another emergency room, where the patient had presented after a suicide attempt "and was diagnosed with lacerations to the wrist and an emergency psychiatric condition," the settlement states.

OIG: 'No Reason' Not to Accept Transfer

There was no reason for Park Royal not to accept the transfer, says OIG Senior Counsel Geeta Taylor. "It had the capability and capacity to accept the transfer," she says. The patient wound up receiving care at a different hospital.

"EMTALA expressly requires hospitals with specialized capability to accept appropriate transfers," adds Katie Arnholt, deputy branch chief of the OIG's Administrative and Civil Remedies Branch.

Hospitals shouldn't send away patients based on their insurance or ability to pay, says attorney Catherine Greaves, with King & Spalding in Austin, Texas. "It's the very purpose EMTALA was written." It's curious, though, from a purely financial perspective, to turn patients away when the hospital is out of network. "In some states, typically in emergencies, insurance companies are required to treat the care provided like it's in network, but after that, when there is no longer an emergency, it's out of network. Once the patient is stabilized, you can transfer," she notes. And whether it's in or out of network, the hospital will still get paid something. But there aren't enough details available about the case to know exactly what the circumstances were or draw any conclusions about the hospital's actions, Greaves says.

Park Royal Hospital didn't admit liability in the settlement. It did not comment by press time.

Meanwhile, CMS on July 2 issued guidance on EMTALA and psychiatric hospitals, partly because surveyors have been applying it differently in different regions, attorneys say ("CMS: With EMTALA, ED Doctors Can Do Psych MSE; Transfers May Be OK Despite Open Bed," *RMC* 28, no. 25). The guidance addresses capacity and transfers,

among other things.

Patient Came Back to ER in Ambulance

In the other case, Transylvania Regional Hospital in Brevard, North Carolina, agreed to pay $25,000 to settle allegations it violated EMTALA when it didn't provide an adequate MSE and stabilizing treatment to a patient, who was discharged but came back later in worse shape, according the civil monetary penalty settlement with OIG.

The patient first presented at the ER with complaints of abdominal pain and pain radiating bilaterally to his lower extremities. His blood pressure and respiratory rate were elevated. "Despite his presentment, [the hospital] discharged [the patient] without providing an adequate medical screening examination or stabilizing treatment," the settlement alleges. Later the same day, an ambulance brought the patient back to the hospital. This time, however, he complained of paralysis of the lower extremities, leg pain and leg swelling. Transylvania Regional Hospital transferred him to another hospital.

"We see a lot of these cases where the failure to provide an appropriate medical screening exam in the first presentment results in a secondary presentment at the same hospital or a second hospital," Taylor says. "It shows the failure to provide an appropriate medical screening exam on the first presentment resulted in a delay in care." It's unclear what role the delay played in the transfer, but a transfer was necessary to provide a higher level of care, she says.

Transylvania Regional Hospital denied liability in the settlement and had no comment by press time. It is now known as ANC Transylvania Community Hospital.

In terms of EMTALA violations generally, Arnholt says, "the patterns we are seeing" fall into three areas:

1. Patients aren't appropriately transferred or accepted for transfer because of their insurance coverage;
2. On-call physicians fail to come to the emergency room to provide screening and stabilizing services and that results in an unnecessary transfer; and
3. "Cursory" MSEs fail to address patients' presenting complaints or symptoms and lead to transfers, she says.

Lawyer: A Mistake Is Not an EMTALA Violation

Greaves says it's not an EMTALA violation to overlook a medical problem during an MSE. "If someone just eyeballs the patient and the nurse talks to them for two minutes, that is probably not an adequate screening. But if they perform an appropriate exam and make an affirmative screening, I would argue it is an adequate screening, but they made the wrong call," she says.

This has become controversial, now that some surveyors reviewing EMTALA compliance on behalf of CMS are questioning patient care instead of simply checking whether MSEs were performed appropriately. Although patient safety is paramount, EMTALA has a circumscribed goal—to ensure patients receive emergency care until they're stabilized or admitted to the hospital regardless of their ability to pay—as described in the EMTALA regulations. But CMS recently said that "the appropriateness of an examination is determined based on the quality of care provided, not just that an examination was performed" ("Some EMTALA Surveys of MSEs Go Too Far, Experts Say; CMS: MSEs Are Also About Quality," *RMC* 28, no. 3).

Hospitals should concentrate on ensuring they have policies and procedures for EMTALA requirements, Greaves

says. They need to address which clinicians are qualified to perform MSEs (i.e., are "qualified medical practitioners") and have policies that reinforce to on-call physicians that coming in to treat emergency room patients is not a choice. The hospital also should decide which clinicians are eligible to screen patients for psychiatric conditions. As the CMS EMTALA guidance said, "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." And it may be worth reminding everyone that the hospital doesn't turn away people without insurance, Greaves says, and take the opportunity to add that it doesn't discriminate based on age, race, national origin, sex, color or disability.

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