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Two Hospitals Pay $1.45M to Settle EMTALA Allegations with OIG Over 54 Psychiatric Patients

By Nina Youngstrom

Two Tennessee hospitals have agreed to pay $1.45 million to settle allegations they violated the Emergency Medical Treatment and Labor Act (EMTALA) when they didn't stabilize patients with emergency psychiatric medical conditions who often sat in the emergency rooms for long stretches before they were transferred, usually to a state hospital, according to separate civil monetary penalty settlements with the HHS Office of Inspector General (OIG). TriStar Centennial Medical Center and TriStar Skyline Medical Center, both in Nashville, are part of the TriStar Division of HCA Healthcare, and each paid $725,000 to settle its case.

For example, a 46-year-old woman with suicidal thoughts showed up at the emergency room of Tristar Skyline in July 2017. A physician examined the woman, who had major depressive disorder and planned to shoot herself. After 59 hours and 21 minutes in the emergency room, the uninsured woman was transferred, apparently to a state hospital. During that time, "she did not receive available stabilizing treatment for her emergency medical condition," according to the allegations in the settlement, which was obtained through the Freedom of Information Act.

The settlements describe 29 incidents at TriStar Centennial and 25 incidents at TriStar Skyline where patients who came to the emergency room with unstable psychiatric emergency medical conditions allegedly were not provided stabilizing treatment. Tristar Centennial had an "onsite psychiatric unit, Parthenon Pavilion," and Tristar Skyline had an inpatient psychiatric unit, which both had the capacity to treat emergency psychiatric patients, OIG alleged in the settlements.

"Rather than admit and treat the patients, they transferred the patients to other hospitals, typically the state psychiatric hospital after holding them in the ED for an inappropriately long time," OIG said in a statement. "Moreover, the decision to transfer the patient in most incidents was based, in part, on the patient's insurance status."

The settlements are reminiscent of AnMed Health's $1.295 million civil monetary penalty settlement with OIG in 2017. Even though AnMed Health in South Carolina had on-call psychiatrists and inpatient mental health units in its hospitals, they allegedly kept some psychiatric patients in their emergency rooms, sometimes for days or weeks at a time, without properly evaluating and/or treating them in alleged violation of EMTALA, according to OIG.[1]

The TriStar hospitals didn't admit liability in their settlements. In a statement, the TriStar Division noted that "the increasing need for behavioral health care services is a challenge faced by healthcare providers across the country. Following a survey in 2017, CMS accepted the hospital's corrective action plan which includes additional processes and resources. We are pleased that this has been resolved and will continue to focus on providing high-quality patient care to the communities we serve."

EMTALA requires hospitals to give medical screening exams to all patients who show up in the emergency

department (ED) regardless of ability to pay and to stabilize them if they have emergency medical conditions. Patients may be transferred when hospitals lack the capacity to treat them, and receiving hospitals must accept transfers if they have the capacity to treat the patients. EMTALA also requires both a medical and a psychiatric medical screening exam when patients show up at psychiatric hospitals with a mental health condition (e.g., suicidal ideation), as CMS made clear in 2019 guidance on EMTALA and psychiatric hospitals.[2]

'These Issues Are Pervasive'

The peril of EMTALA violations is highlighted in behavioral health because hospitals don't always have the resources or expertise in this area, said attorney Jackie Hoffman, with K&L Gates. "They often find themselves needing to transfer patients, and if they don't follow the correct steps or are struggling with resources to properly screen and stabilize patients, they are staring at risk under EMTALA," she noted. The penalties are compounded under EMTALA because they're applied on a per-violation basis (e.g., failure to stabilize, noncompliant transfers), not a per-patient basis, Hoffman explained.

"These issues are pervasive," said attorney Kathy Poppitt, with King & Spalding. Demand for inpatient psychiatric care is outpacing available beds, she said. Hospitals also may not be equipped for certain types of psychiatric patients, such as children and adolescents, said attorney Catherine Greaves, with King & Spalding. "The number of psych beds has decreased," she noted. "It's often hard to find a place to transfer a patient where they can get the kinds of care they need for severe mental illnesses," especially if they require involuntary commitment.

Notwithstanding the pressures, there are better ways to deal with the demand than leaving patients with emergency psychiatric medical conditions in the emergency room for inordinate periods of time or transferring them inappropriately, Poppitt said. "EMTALA is clear you can't transfer a patient without meeting the EMTALA requirements just because there is a state hospital for psychiatric treatment," Greaves said. "Make sure you have provided everything to these patients as if they are any other kind of medical patients."

Reported Backlog of 2,000 Complaints

Hospitals also should be attuned to the definitions of an "emergency medical condition" and "stable" as they apply to psychiatric patients, Poppitt and Greaves said. According to Appendix V to the *State Operations Manual*, which is the guidance to surveyors for EMTALA:

"In the case of psychiatric emergencies, if an individual expressing suicidal or homicidal thoughts or gestures, if determined dangerous to self or others, would be considered to have an EMC.

"Psychiatric patients are considered stable when they are protected and prevented from injuring or harming him/herself or others. The administration of chemical or physical restraints for purposes of transferring an individual from one facility to another may stabilize a psychiatric patient for a period of time and remove the immediate EMC but the underlying medical condition may persist and if not treated for longevity the patient may experience exacerbation of the EMC. Therefore, practitioners should use great care when determining if the medical condition is in fact stable after administering chemical or physical restraints."[3]

Although it's unclear whether EMTALA violations are being investigated at the same pace as they were pre-pandemic, "right before Omicron, we heard from CMS they had a backlog of 2,000 complaints," Poppitt said. "They were getting prepared to investigate, but they were going to hold off." It's unclear if surveyors have moved forward, she noted.

OIG: Patients Lingered in ED for Days

According to the settlement with Tristar Centennial, when 29 patients presented at its ED with an unstable psychiatric emergency medical condition, "Respondent failed to provide, with the staff and facilities available at Respondent, further medical examination and treatment required to stabilize the patient's emergency medical condition." In two cases, the patients were discharged home. In the other cases, "Respondent held the patient inappropriately in its ED for over 24 hours before transferring the patient." Transfer decisions were based in part on the patient's insurance status and were made by the hospital and the Tristar Behavioral Health Transfer Center, OIG alleged.

Here are some examples of the incidents described in the settlement:

- "M.R., a 57-year-old male, arrived by ambulance at Respondent's ED on 7/13/2017 at 12:47 a.m. with complaints of delusions and mania. M.R. had out-of-state Medicaid insurance. At 12:59 a.m., an ED physician initiated an examination of M.R. and completed a Certificate of Need for Emergency Involuntary Admission. M.R. was transferred to [unidentified hospital], a state psychiatric hospital, after being held in Respondent's ED for 105 hours, during which time M.R. did not receive available stabilizing treatment.

- "J.A., a 39-year-old female, was brought by ambulance to Respondent's ED on 7/16/2017 at 7:47 a.m. with complaints of psychosis. J.A. appeared confused, disoriented, and was found walking through traffic. J.A. was uninsured. At 8:08 a.m., an ED physician initiated an examination of J.A., and a Certificate of Need for Emergency Involuntary Admission was completed. When J.A. attempted to leave the ED, she was administered Haldol and Valium. J.A. remained in the ED for 91 hours, without receiving stabilizing treatment, before being transferred to [an unidentified location] with an unstable emergency psychiatric condition.

- "J.R., a 37-year-old male, presented to Respondent's ED on 10/11/2017 at 3:06 p.m. with complaints of suicidal ideations and wanting to detox. J.R. was uninsured. At 3:15 p.m., a nurse practitioner initiated an examination of J.R. On 10/13/2017 at 5:00 a.m., an ED physician completed a Certificate of Need for Emergency Involuntary Admission. J.R. was transferred to [an unidentified location] after being held in the ED for 160 hours, during which time he did not receive available stabilizing treatment for his emergency medical condition.

- "B.E., a 22-year-old male, arrived by ambulance to respondent's ED on 4/2/2016 at 9:18 p.m. with chief complaints of hallucinations and suicidal ideations. B.E. was homeless and uninsured. At 9:25 p.m., an ED physician initiated an examination of B.E. B.E. remained in the ED for 64 hours, without receiving stabilizing treatment, before being discharged with an unstable emergency psychiatric condition."

OIG's settlement with TriStar Skyline has similar allegations regarding 25 people who presented to its ED with an unstable psychiatric emergency medical condition. "In each incident, Respondent failed to provide, with the staff and facilities available at Respondent, further medical examination and treatment required to stabilize the patient's emergency medical condition. Rather than admitting the patient to Respondent's inpatient psychiatric unit that had the capability and capacity to treat the patient, Respondent held the patient inappropriately in its ED for over 24 hours before transferring the patient to" an unidentified state psychiatric hospital. The transfer decisions were based partly on the patient's insurance status, OIG alleged.

Here are examples of incidents cited in the TriStar Skyline settlement:

- "B.J., a 28-year-old male, presented to Respondent's ED on 10/21/2017 at 7:31 a.m. with complaints of aggressive behavior, schizophrenia, and hallucinations. B.J. had out-of-state Medicaid insurance. B.J. presented to the ED after his family brought him to Respondent's Madison Campus for psychiatric care, but the family was instructed to bring B.J. to Respondent's ED for medical clearance. At 7:58 a.m., a

physician's assistant initiated an examination of B.J., and an ED physician completed a Certificate of Need for Emergency Involuntary Admission. B.J. remained in the ED for 57 hours and 19 minutes, without receiving available stabilizing treatment before being transferred to [an unidentified location] with an unstable emergency psychiatric condition.

- "W.I., a 30-year-old male, was brought by ambulance to Respondent's ED on 9/16/2017 at 9:22 p.m. with complaints of depression, suicidal ideations, and plans to harm himself. W.I. had out-of-state Medicaid insurance. At 9:48 p.m., an ED physician initiated an examination of W.I., and a Certificate of Need for Emergency Involuntary Admission was completed. W.I. was transferred to [an unidentified location] after being held in the ED for 81 hours and 38 minutes, during which time he did not receive available stabilizing treatment.

- "J.P., a 26-year-old female, presented to Respondent's ED on 6/14/2017 at 4:08 p.m. with complaints of a psychotic break, suicidal ideations and plans to shoot herself. J.P. was uninsured. At 4:37 p.m., an ED physician initiated an MSE [medical screening exam], and a Certificate of Need for Emergency Involuntary Admission was completed by the ED physician. S.B. remained in the ED for 76 hours and 35 minutes, without receiving stabilizing treatment, before being transferred to [an unidentified location] with an unstable emergency psychiatric condition."

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1 OIG, "South Carolina Hospital Settles Case Involving Patient Dumping Allegations," enforcement actions, June 23, 2017, https://bit.ly/3IkJioH.
2 Karen Tritz, "Frequently Asked Questions on the Emergency Medical Treatment and Labor Act (EMTALA) and Psychiatric Hospitals," memorandum, Ref: QSO-19-15-EMTALA, July 2, 2019, https://go.cms.gov/32iD7SB.
3 CMS, "Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases," Pub. 100-07, *State Operations Manual*, revised July 19, 2019, https://go.cms.gov/3FBJ783.