

Compliance Today – February 2018 EMTALA and the challenges of treating behavioral health patients in crisis

by Catherine Greaves and Kristin Roshelli

Catherine Greaves (cgreaves@kslaw.com) is a Counsel in the Austin, TX office of King & Spalding LLP. Kristin Roshelli (krshelli@kslaw.com) is a Senior Associate at the law firm King & Spalding LLP in Houston.

Although providers are generally aware of their obligations under the Federal Emergency Medical Treatment and Labor Act (EMTALA), they often struggle with how to satisfy their EMTALA obligations when examining, stabilizing, treating, and/or transferring behavioral health patients. Complicating factors include a lack of inpatient and community services, insufficient insurance coverage, and a shortage of qualified providers to treat behavioral health patients. In 2016, the per capita number of state psychiatric beds was 11.7 per 100,000 people, the same level as in the 1850s. The estimated need is approximately four to five times that amount — 40 to 60 beds per 100,000. In sheer numbers, there are now approximately 38,000 state-funded psychiatric beds for 8.1 million people with serious mental illness compared to 560,000 beds serving 3.3 million people with the same conditions in 1955.^{[1], [2]}

Given the lack of available beds, it is not surprising that many patients with behavioral health problems are seeking treatment in hospital emergency rooms (ERs). Nor is it surprising that ER physicians are struggling with how best to examine, stabilize, treat, and/or transfer these patients, given the patient volume and the limited resources available to support ER physicians trying to care for this patient population. This bed shortage and the resulting need to treat behavioral health patients within the confines of an ER is also complicating providers' ability to comply with their EMTALA obligations.

Psychiatric illness can trigger EMTALA obligations

Caring for behavioral health patients in the Emergency department involves a unique set of laws and requirements and a major consideration is compliance with EMTALA, commonly known as the “anti-dumping” law.^[3] EMTALA is triggered if a behavioral health patient comes to the Emergency department of a hospital and requests emergency care. Behavioral health patients may have a psychiatric illness, suicidal or violent thoughts or ideations due to an underlying mental illness, or be unable to care for themselves because of a mental illness.

Under EMTALA, when a patient presents at a hospital Emergency department, generally, the hospital must:

- provide an appropriate medical screening examination within the capability of the Emergency department;
- if an emergency medical condition is found, provide the patient further examination and treatment, as available by the hospital's staff and facilities, to stabilize the condition (which may require admitting the patient); and
- if the hospital is unable to stabilize the patient using its available staff and facilities, arrange an appropriate transfer of the patient to another medical facility for further treatment.

Adequately addressing both mental health and medical issues

It can be challenging for physicians to determine what constitutes an appropriate medical screening for behavioral health patients and what type of medical workup is suitable and required by EMTALA. Distracted by the behavioral health challenges, physicians often provide only a cursory medical exam that may overlook organic causes for the behavioral health problem(s) or conditions such as diabetes, high blood pressure, or other concurrent medical problems. For this reason, a hospital should establish, as part of its policies and procedures, a base screening protocol for behavioral health patients. The protocol should include basic medical diagnostic protocols, such as a vital signs, history, and physical exam. A neurological exam and psychiatric screening tools, such as a mental status exam (addressing appearance, speech, alertness, etc.) may also be included in the protocol.

When drafting the protocol, other standard diagnostic procedures to be conducted, such as laboratory tests, should be carefully considered. For example, will drug and alcohol testing be standard? If so, is this truly appropriate for every behavioral health patient? Consider that any test provided for under a hospital policy will become a requirement, not a suggestion. This will become particularly relevant during an audit or if the care provided to a patient comes under scrutiny as part of a medical malpractice investigation. In such a situation, one of the first steps taken by a reviewer will be to determine whether staff adhered to hospital protocols and policies. If, for example, a required test was not ordered or conducted, the care given the patient could be challenged as being deficient. Thus, a specific test or diagnostic procedure should be included as part of a standard screening protocol only after careful review and consideration is given to best clinical practices, the capability of the hospital, and input from professional personnel.

This document is only available to members. Please [log in](#) or [become a member](#).

[Become a Member Login](#)