EMTALA / COBRA: Implications for Transport

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I. Objectives

A. Understand the responsibilities of a hospital to provide a medical screening examination
B. Recognize the criteria to stabilize an emergency medical condition
C. Identify the transfer requirements of an unstable individual
D. Review the obligations of hospitals with specialized services
E. Understand the requirements for record keeping and documentation
F. Identify the potential penalties for violations
G. Identify policies and procedures that could facilitate compliance with the law
H. Realize how COBRA could impact transport services
I. Determine what role you can play with your referring and receiving facilities and physicians

II. Omnibus Budget Reconciliation Acts (OBRA)

A. Passed in 1980 to reduce government spending for health care under Medicare and Medicaid
B. Concern in the 1980's -- "patient dumping"
C. Consolidated Omnibus Budget Reconciliation Act (COBRA)
    1. Passed in 1986, as part of the Social Security Act
    2. Amended by the Omnibus Budget Reconciliation Acts (OBRA) of 1987 and 1989
    3. Effective July 1, 1990
    4. Created the patient stabilization and transfer requirements for hospitals and physicians
    5. "Standard of care" according to federal law
    6. The law applies to
        a. All hospitals that participate in Medicare or Medicaid
        b. All physicians, with responsibility to examine, treat, or transfer an individual
        c. All individuals, regardless of age or Medicare / Medicaid benefits
    7. Compliance
        a. COBRA is a "technical" law requiring technical compliance
        b. Compliance with COBRA is not presumed
        c. You must document compliance
    8. Interpretation
        a. Word-for-word, line-by-line review
        b. Legal interpretations
        c. Case law
        d. Health Care Financing Administration (HCFA)

(1) "Interim final rule. . ."
(2) Effective July 22, 1994
(3) Emergency Medical Treatment and Active Labor Act (EMTALA)

III. Understanding and Compliance

A. Medical screening requirement
B. Stabilization of an emergency medical condition
C. Transfer of an individual with an emergency medical condition
D. Obligations of hospitals with specialized services
E. Requirements for record keeping and documentation
F. Penalties for violations

IV. Medical screening requirement

A. Applies to
  1. All hospitals with an emergency department that participate in Medicare program
  2. Any individual who "comes to the emergency department"
    a. Other areas of the hospital
    b. Pre-hospital setting
    c. Regardless of source of payment/eligibility for Medicare
B. "Appropriate medical screening exam"
  1. Purpose: To determine if an emergency medical condition exists
  2. Will make the adequacy of every emergency department medical exam a potential legal issue
  3. Triage vs. medical screening examination
    a. Serve different purposes
    b. Independent vs. combined
    c. Triage
      (1) Ranking of individuals who may of may not have an emergency medial condition
      (2) Based upon the seriousness of their condition
      (3) Determines the order that people will be seen in the emergency department
      (4) Often completed by a nurse, but may be any designated individual
  4. Protocol for appropriate medical screening exam
    a. Not established in COBRA or HCFA
    b. May be determined by
      (1) Malpractice standards
      (2) Hospital's own policies
      (3) JCAHO requirements
      (4) Civil penalties
C. What constitutes an appropriate medical screening exam?
  1. Not defined by COBRA or HCFA
  2. Will vary according to
    a. Condition and past history of the patient
    b. Capabilities of the hospital's emergency department
      (1) Facilities

(2) Available personnel

3. Court opinion: . . .any patient should receive "the standard screening procedure accorded by that hospital to other patients complaining of the same problem and exhibiting the same symptoms."

D. Scope of hospital services to use for the medical screening
   1. "Within the capability of the hospital's emergency department"
   2. Extends to all routinely available
      a. Labs
      b. X-rays
      c. Ancillary services
      d. On-call personnel
   3. Emergency department capabilities and ancillary services should be clearly identified in policy

E. Documentation
   1. Requirement -- Not defined
   2. "Screening" only
      a. Individual received a medical screening exam
      b. Reported symptoms and condition
      c. Identify that an emergency medical condition does not exist
   3. Further treatment -- routine ED record

F. Screening and patient registration
   1. Screening examination (and necessary stabilization for an emergency medical condition) may not be "delayed" to inquire about method of payment
   2. Should not delay screening/treatment while verifying information provided
   3. Suggests that if clinical personnel are available, patients should be screened promptly
   4. Managed care patients (HMO's etc.)
      a. Evaluated patients
      b. "Individual" vs. "Patient"
      c. Hospital's obligations
      d. HMO's obligations
   5. Evaluate current triage procedures
   6. State law may expand requirements

G. Who may conduct the medical screening exam?
   1. No provision or guidance
   2. Should be approved by hospital's governing body
   3. Medical screening exam
      a. Physician
      b. "Qualified medical person"
   4. HCFA: By individuals determined qualified by hospital by-laws
   5. ACEP

H. Determining the existence of an "emergency medical condition"
   1. Defined in the law
   2. A medical condition manifested by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances and/or symptoms of substance abuse) that may result in

a. placing the health of the individual (or unborn child) in serious jeopardy
b. Serious impairment to bodily functions
c. Serious dysfunction of any bodily organ or part

3. With respect to a pregnant woman having contractions
a. There is inadequate time to effect a safe transfer before delivery, or,
b. The transfer may pose a threat to the health of the woman or her unborn child

I. Applicability of COBRA to other hospital locations
1. "Locations"
a. Obstetrics
b. Other evaluation areas
c. Volunteers desk
d. In-patient
e. Ambulances owned by the hospital
2. Central log

J. Applicability of COBRA to ambulance transports
1. Ambulances owned/operated by the hospital
a. Individual in ambulance = "come to the emergency department"
b. Hospital that owns/operates the ambulance has the COBRA responsibility, <u>even if another hospital is providing medical direction</u>
c. Transport to the provider's own hospital will satisfy COBRA
d. A transport to <u>any other destination</u> requires compliance with COBRA
(1) Patient request, or
(2) Physician certification
(3) Both must include risks vs. benefits
2. Ambulances <u>not</u> owned/operated by the hospital
a. COBRA compliance is not required
b. Telemetry/radio contact $\neq$ "come to the emergency department"
c. Access may be denied for "diversionary" status
d. If the ambulance <u>does</u> arrive at the hospital even if instructed to divert elsewhere, COBRA applies

K. Absence of an emergency medical condition
1. Hospital's obligations are met when
a. Medical screening reveals no emergency medical condition, or,
b. Emergency medical condition has been stabilized
2. No prohibition against transferring these patients

L. Presence of an emergency medical condition
1. The hospital must provide further examination and treatment within its capabilities, or,
2. Appropriately transfer the patient

V. <u>Stabilization of an Emergency Medical Condition</u>

A. "To stabilize"
   1. Defined in the law
   2. The hospital must provide medical treatment "necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility"
   3. With respect to a pregnant patient with contractions, stabilization means "the woman has delivered the child and the placenta"
   4. Must use the staff and facilities available to further treat and stabilize the individual

B. Role of the on-call physician
   1. To "appear" within a reasonable period of time
   2. Telephone "consultation"
   3. Should be addressed in hospital policy

C. "Stabilized" patient
   1. Defined in the law
   2. ". . . that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer. . ."

D. Documentation of a stable patient
   1. No specific documentation requirement in the law
   2. Patient's record should reflect
      a. Condition
      b. Treatment provided to stabilize the patient
      c. A statement that mirrors the law

E. Stable patient's consent to transfer
   1. COBRA does not apply
   2. Should be addressed in hospital policy

F. Refusal to consent to treatment
   1. Patient's rights and wishes
   2. Hospital's obligation
      a. Offer examination and treatment necessary to stabilize the emergency medical condition
      b. Inform the patient of the risks and benefits of the examination and treatment
      c. Document the offered examination and treatment
      d. Document the risks and benefits
      e. Document why the patient refused the recommended examination/treatment
      f. Take all reasonable steps to obtain the refusal in writing
   3. Role of a witness

VI. <u>Transfer of an Individual with an Emergency Medical Condition</u>

A. The hospital may not transfer the individual unless
   1. Options for transfer
      a. The individual (or a legally responsible person acting on the individual's behalf) has requested transfer
         (1) After being informed of the hospital's obligation under the law

(2) The patient is informed of the risk of transfer
(3) The request is in writing

b. A physician (or "qualified medical person") has signed a certificate identifying the benefits, which outweigh the risks of transfer

2. The transfer is an "appropriate transfer"

B. Refusal to consent to transfer
1. Patient may refuse to consent to transfer
2. Hospital must meet its obligations under COBRA
a. Offers to appropriately transfer the patient
b. Informs the patient of risks and benefits of transfer
c. Take all reasonable steps to obtain an informed consent to refusal of transfer in writing
d. Obligation to treat the patient until stabilized remains
3. Role of a witness

C. "Appropriate transfer" of an unstable patient
1. The transferring hospital provides the medical treatment within its capacity to minimize the risks to the patient
a. Evaluate the capabilities of the transferring hospital and consulting staff
b. Determine what services the hospital can and cannot provide for a particular patient
c. Reason for concern. . .
(1) "Capacity"
(2) Delays
(3) Medical judgement vs. COBRA
2. Patient transfer decisions and actions
a. Determine (and find) the receiving hospital and accepting physician
b. Complete a risk-benefit analysis
c. Exchange of clinical information with the receiving hospital
d. Evaluate the transport requirements
e. Complete the certificate
3. Selecting a Receiving Hospital
a. Considerations
(1) Patient care needs
(a) Higher level of care
(b) Lateral transfer
(2) "Available" receiving hospital
(a) The receiving facility has available space and qualified personnel for the treatment of the individual and
(b) Has agreed to accept the transfer and to provide the appropriate medical treatment
(3) Time and distance
b. Formal transfer policies
c. Patient transfer agreements should address
(1) Specialty services available at the receiving facilities
(2) Admission criteria for each specialty service

(3) Contact person and telephone number
(4) Diagnostic and therapeutic capabilities
(5) Diagnostic and therapeutic protocols prior to transfer
(6) Documentation to accompany the patient
(7) Availability and composition of transport teams
(8) Transfer acceptance procedures
(9) Commitment to accept appropriate transfers when there are available resources

d. "Transfer resource directory"
(1) Multiple transfer agreements
(2) Cross-referenced information

e. Regional Referral Systems
(1) Tertiary care centers
(a) Trauma
(b) Burn
(c) High risk neonates
(d) High risk obstetrics
(e) Pediatric ICU
(2) Referral networks vs. COBRA
(a) No "automatic" referrals
(b) No exceptions to COBRA requirements

4. Risk-benefit analysis
a. Risks and benefits must be summarized on the certificate
b. Example of Benefits
(1) Resources available at receiving hospital that are not available transferring hospital
(a) Specialized services
(b) Facilities
(c) Diagnostic equipment
(d) Personnel
(2) Continuity of care / complicated medical history
(3) "Financial" benefit to the patient

c. Example of Risks
(1) Death
(2) Deterioration of the medical condition
(3) Medical personnel available to care for patient during transport
(4) Additional delay in receiving appropriate treatment
(a) Method of transport
(b) Time and distance of transport
(c) Time required to initiate transport
(5) Risks related to the mode of transport
(a) Limitations of transport vehicle
(b) Delays due to traffic, weather, etc.
(c) Accidents

d. Other considerations
(1) Closest vs. most appropriate hospital
(2) Availability of a specialized transport team
(3) One author's perspective

5. The transfer is effected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer
    a. Consider
        (1) The patient's current medical condition
        (2) The most serious complication reasonably possible during transfer
    b. "Qualified personnel"
        (1) Not specified in COBRA
        (2) Enforcement suggests that: Personnel accompanying the patient must be qualified and trained (and competent) to provide whatever treatment and life support measures that may be required to treat the patient's condition and any reasonable foreseeable complication during the transport.
        (3) "Routine" ambulance crew
            (a) Availability
            (b) Training and capability
        (4) Additional personnel
            (a) Source
                i) Referring facility
                ii) Receiving facility
                iii) Dedicated transport team
            (b) Training and capability
    c. Transportation equipment and supplies must be available and sufficient in the transport vehicle to allow the crew to treat the patient's condition and any reasonable foreseeable complication during the transport
    d. Medical control during transfer
        (1) Physician medical control is required for all transports
        (2) Options for medical control
            (a) Transferring physician
            (b) Receiving physician
            (c) Medical director of the transport service
        (3) Can be accomplished by
            (a) On-line control
            (b) Off-line control
            (c) Visual control
    e. Future staffing patterns
        (1) Greater scrutiny
            (a) "Change" in level of care
            (b) Scope of practice of the transport team
        (2) Less likely to "take a chance"
6. Mode of transport
    a. Knowledge of available transport vehicles
        (1) Ground Ambulances
        (2) Air ambulances
            (a) Helicopter
            (b) Fixed-wing (airplane)

b. Awareness of the characteristics
    (a) Advantages
    (b) Disadvantages
    (c) Operating characteristics
    (d) Medical capabilities
c. Logistical Issues
    (1) Response times
        (a) Immediately accessible ground ambulance vs. distant helicopter
        (b) Helicopter-to-hospital vs. airplane-to-airport/ambulance-to-hospital
    (2) Transport time
    (3) "Real" time

7. Medical records
    a. The transferring facility must send to the receiving facility all medical records related to the emergency medical condition
        (1) Observations of signs and symptoms
        (2) Working diagnosis
        (3) Treatment provided
        (4) Available test results
    b. Informed written request for transfer or certificate
    c. Name and address of any on-call personnel who refused or failed to appear in a reasonable time
8. Elements of a certificate for an unstable patient
    a. Does not need to be a separate document
    b. Must be completed prior to transfer and provided to receiving hospital
    c. Should include language that mirrors the law:
    A statement that, "based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual, and, in the case of labor, to the unborn child from effecting the transfer"
    d. A summary of the risks and benefits upon which the certification is based
    e. May be completed by a "qualified medical person" after consultation with the physician
    f. Signature of the physician <u>authorizing</u> the transfer
    g. False certification may result in a COBRA violation
9. Transport provider agreements
    a. Part of a well-organized transfer policy
    b. Facilitates communications and coordination with transport service
    c. Facilitates compliance with COBRA by addressing
        (1) Qualified personnel
            (a) Team composition
            (b) Training
        (2) Equipment and supplies

(3) Medical control
(4) Available transport vehicles

D. Inappropriate transfers
1. Requirement to report receiving an improperly transferred individual within 72 hours
2. Failure to report may subject the receiving hospital to a violation

VII. Obligations of Hospitals with Specialized Services

A. Participating hospitals with specialized facilities shall not refuse to accept an appropriate transfer if they have the capacity to treat the individual
B. "Such as"
1. burn units
2. shock-trauma units
3. neonatal intensive care units
4. regional referral centers (in rural areas as designated by HCFA)
C. Duty to accept
1. Rest with the hospital: "failure to facilitate"
2. Receiving facilities are relatively better to care for the patient
D. Hospitals should determine
1. Which of its services are "specialized"
2. Capabilities and capacity of these facilities

VIII. Requirements for Record Keeping and Documentation

A. Hospitals should have written policies and procedures detailing how the hospital and staff will comply with the COBRA obligations
B. Transfer records
1. Certificate of transfer
2. Must be retained for 5 years
C. Physicians on-call list
1. Name of physician on-call
2. Any limitations for that physician
a. On-call for which medical conditions
b. Days and times on-call
3. No mention as to which specialties must be included
4. On-call vs. availability
D. Posting requirement
1. Two signs are required
a. The right of the individual to an examination and to treatment of an emergency medical condition
b. Indication whether or not the hospital participates in the state Medicaid program
2. Must be in a conspicuous location in the emergency department and other areas
3. Must be visible at 20 feet
4. Must be in wording that is understandable to individuals served by the hospital

IX. Penalties for COBRA Violations

A. Penalties for hospitals

1. Not more than $50,000 for each violation
2. Suspension or termination of its Medicare provider agreement
3. Personal harm
4. Financial loss to another hospital

B. Penalties for physicians
   1. Physicians subject to penalties
      a. Any physician responsible for the examination, treatment, or transfer of a patient
      b. Physician on-call who "fails or refuses to appear within a reasonable period of time"
         (1) Examining physician may authorize transfer and is <u>not</u> subject to penalty
         (2) On-call physician <u>is</u> subject to civil penalty
      c. Physicians may be
         (1) Employed by hospital
         (2) Contracted with hospital
   2. Exclusion from Medicare and Medicaid programs
   3. Penalty up to $50,000 for each violation
   4. Not covered by malpractice insurance
   5. Violations can include
      a. Knowing and willful or negligent violation
      b. Falsifying a certification
      c. Misrepresenting an individual's condition
      d. Misrepresenting a hospital's obligation

C. Whistle blowers protection
   1. Protects physicians and other qualified medical person
   2. Cannot be penalized for refusing to authorize the transfer of an unstable patient
   3. Cannot be penalized for reporting a COBRA violation

X. Summary

A. Impact of COBRA -- medical responsibility, judgment, and, ultimately civil liability
B. Critical Actions and decisions
   1. Stable vs. Unstable
   2. Patient transfer requirements
C. Technical compliance with COBRA is required
D. Adequate documentation is required and essential
E. Negative impact of COBRA
   1. More variables in a complex decision making process
   2. Potential conflict
   3. Increased confusion
      a. Federal vs. state vs. local laws
      b. Interpretations
      c. Lack of definitions
F. Positive impact of COBRA
   1. Reduced denial of treatment
   2. Decreased patient dumping
   3. Increased accountable

4. Policies and procedures
    a. In advance
    b. Uniformity
    c. Integrated patient transport system
5. Improved documentation
6. Provider agreement and patient transfer agreements

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