



# EMTALA Obligations Under The Final Rule Teleconference

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# Agenda Overview

1. Welcome and Introductions
2. EMTALA Update
  - CMS Process / Philosophy
  - Discussion of Final Rule
3. Legal Issues and Analysis
  - Implication of Final Rule
  - Open Issues
4. Practical Implications and Approaches
  - Practical Changes to Policies and Procedures
  - CMS Audit Experience
5. Questions and Answers



# EMTALA Update

Leslie V. Norwalk, Esq.

*Deputy Director, Centers for Medicare and  
Medicaid Services*

Please refer to EMTALA Update  
presentation.



# Legal Analysis

Michael J. Philbrick, Esq.

*Honigman Miller Schwartz and Cohn, LLP*



# Application of EMTALA

- ✧ Dedicated Emergency Department
  - ◆ Determination focused on nature of services
  - ◆ Objective and subjective criteria
  - ◆ May include non-traditional “emergency rooms”
  - ◆ Retroactiveness



# Request for Medical Services

- ✧ Dedicated Emergency Department
  - ◆ Request exam and treatment for a medical condition
  - ◆ Prudent layperson observer
- ✧ Other Hospital Campus Location
  - ◆ Request exam and treatment for what may be an emergency medical condition
  - ◆ Prudent layperson observer



# Prudent Layperson Observer Standard

- ✧ Standard to determine if EMTALA triggered
- ✧ No interpretation by hospital employees and volunteers
- ✧ Applicability where person is able to request exam and treatment



# EMTALA Screening

- ✧ Performed by Qualified Medical Personnel
- ✧ Appropriate for any individual presenting in such manner
- ✧ Extent necessary to determine Emergency Medical Condition
- ✧ Subjective determination





# Inpatient Clarification

- ✧ Definition of inpatient
- ✧ EMTALA obligations end at admission
  - ◆ Not applicable to elective admissions
- ✧ State laws and CoPs protect



# Outpatient Clarification

- ✧ Definition of outpatient
- ✧ Applicability of EMTALA
  - ◆ Request at dedicated emergency department
  - ◆ Before and after an encounter
  - ◆ Post screening obligations
- ✧ State laws and CoPs protect



# On-Call Requirements

- ✧ Follows EMTALA statute
- ✧ Maintained in manner which best meets needs of persons receiving EMTALA services
  - ◆ Seems to prioritize emergency department
- ✧ Exemptions not a violation
- ✧ Reliance on Medical Staff Bylaws



# Registration and Prior Authorization

- ✧ May follow reasonable registration procedures
  - ◆ Obtain information
  - ◆ Cannot delay screening or treatment
- ✧ May not seek authorization until after screening exam and stabilization procedures initiated
  - ◆ Must stabilize if authorization denied



# Conditions of Participation

- ✧ Provide protection to inpatients and outpatients
  - ◆ Governing Body
  - ◆ Emergency Services
  - ◆ Discharge Planning
  - ◆ Medical Staff
  - ◆ Outpatient Services
  - ◆ Quality Assessment and Performance Improvement



# Practical Implications

Chris Sangalli

*Director of Risk Management, Bronson  
Healthcare Group*



# EMTALA Policy Changes

- ✧ Discussion of Compliance Policy changes
- ✧ Please refer to Sample Compliance Policy



# CMS Survey

- ✧ Governing Board Policies
  
- ✧ Contracts
  
- ✧ Medical Staff Bylaws or Rules and Regulations
  
- ✧ Hospital-Wide EMTALA Policies





# CMS Survey

- ✧ Department Policies
- ✧ Site-Specific Policies
- ✧ Educational Components
- ✧ Physical Compliance