

REGULATORY MANDATES SUMMARY HANDOUT

HIPAA (The Health Insurance Portability and Accountability Act of 1996)

- Developed to prevent threats to patient confidentiality from electronic health care transactions
- Requires providers to protect the confidentiality, integrity, and availability to patients' "individually identifiable personal health information" in any form.
 - Individually identifiable personal health information (PHI): information that relates to a person's physical or mental health, the provision of health care or the payment for healthcare.
- All patients must receive a plainly written "notice of privacy practices" at each ED visit. They must also acknowledge receipt of this in writing.
- The only times that emergency physicians may use and disclose personal health information without the patient's written authorization are the following:
 - To the patient him or herself
 - Caregivers may use and disclose PHI for their own treatment, payment and healthcare operations activities (ex. Billing, education, insurance)
 - With the patient's informal permission – ex. To family members at bedside
 - For any of the 12 "National Security Purposes"
- Penalties
 - A fine up to \$50,000, as well as imprisonment up to 1 year
 - Offenses committed under false pretenses allow penalties to be increased to a \$100,000 fine with up to 5 years in prison
 - Intent to sell, transfer, or use PHI for commercial advantage, personal gain, or malicious harm permit fines of up to \$250,000 and imprisonment up to 10 years

EMTALA (Emergency Medical Treatment and Labor Act)

- Enacted in 1986 as a part of the Consolidated Omnibus Reconciliation Act (COBRA)
 - "Anti-dumping law"
 - Legislated nondiscriminatory access to emergency medical care for any reason
- Emergency Medical Condition:
 - "a condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health [or the health of an unborn child] in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of bodily organs."
- 3 Main Requirements
 - Any individual who comes and requests must receive a medical screening examination to determine whether an emergency medical condition exists.
 - If an emergency medical condition exists, treatment must be provided until the emergency medical condition is resolved or stabilized.

- Hospitals with specialized capabilities are obligated to accept transfers from hospitals who lack the capability to treat unstable emergency medical conditions.
- Transfers
 - EMTALA does not apply to “stable” transfers
 - Unstable patients cannot be transferred unless:
 - A physician certifies the medical benefits expected from the transfer outweigh the risks OR
 - A patient makes a transfer request in writing after being informed of the hospital's obligations under EMTALA and the risks of transfer.
 - In addition, the transfer of unstable patients must be "appropriate" under the law, such that
 - (1) the transferring hospital must provide ongoing care within its capability until transfer to minimize transfer risks,
 - (2) provide copies of medical records,
 - (3) must confirm that the receiving facility has space and qualified personnel to treat the condition and has agreed to accept the transfer
 - (4) the transfer must be made with qualified personnel and appropriate medical equipment.
- Reporting
 - Anyone can report an EMTALA violation
 - Failing to report an EMTALA violation is also a violation
- Penalties
 - There is a 2-year statute of limitations for civil enforcement of any violation. Penalties may include:
 - Termination of the hospital or physician's Medicare provider agreement.
 - Hospital fines up to \$50,000 per violation (\$25,000 for a hospital with fewer than 100 beds).
 - Physician fines \$50,000 per violation, including on-call physicians.
 - The hospital may be sued for personal injury in civil court under a "private cause of action"
 - A receiving facility, having suffered financial loss as a result of another hospital's violation of EMTALA, can bring suit to recover damages.

Pre-Reading Resources

1. EMTALA Fact Sheet. (2009). ACEP.org. [online] Available at: <https://www.acep.org/life-as-a-physician/ethics-legal/emtala/emtala-fact-sheet/#sm.0001k7is7419ujduuu2gdoenk5g53> [Accessed 20 Jan. 2019]
2. Moskop JC, Marco CA, Larkin GL, Geiderman JM, Derse AR. [From Hippocrates to HIPAA: privacy and confidentiality in emergency medicine--Part I: conceptual, moral, and legal foundations](#). Ann Emerg Med. 2005 Jan;45(1):53-9. Review. PubMed PMID: 15635311.
3. Moskop JC, Marco CA, Larkin GL, Geiderman JM, Derse AR. [From Hippocrates to HIPAA: privacy and confidentiality in emergency medicine--Part II: Challenges in the](#)

[emergency department](#). *Ann Emerg Med*. 2005 Jan;45(1):60-7. Review. PubMed PMID: 15635312.

4. Zibulewsky J. (2001). The Emergency Medical Treatment and Active Labor Act (EMTALA): what it is and what it means for physicians. *Proceedings (Baylor University Medical Center)*, 14(4), 339-46.