

EMTALA

This section of the toolkit provides aid to Emergency Department and Urgent Care Centers Medical Directors in their adoption of the L.A. County Safe Pain Medicine Prescribing.

- EMTALA and the Joint Commission for Emergency Departments
- EMTALA and Urgent Care Centers



Safe Pain Medicine Prescribing in Emergency Departments: EMTALA and the Joint Commission

This document is to aid Emergency Department Medical Directors in their adoption of the *L.A. County Safe Pain Medicine Prescribing in Emergency Departments* patient handout and how it reconciles with EMTALA and the Joint Commission.

EMTALA and Pain

Many misconceptions exist regarding EMTALA and the evaluation and treatment of patients with pain as a complaint. EMTALA regulations state that any patient who presents to a Medicare receiving hospital with a complaint of pain, including severe pain, must be provided an appropriate medical screening examination (MSE) to determine if an emergency medical condition exists. The MSE may include any resources available in your hospital to determine if an Emergency Medical Condition exists, including laboratory testing and imaging.

The requirement for an MSE includes patients with chronic pain conditions who present to the Emergency Department with a complaint of pain. The MSE will determine if the complaint of pain is a result of an emergency medical condition. An emergency medical condition is defined as a medical condition such that the absence of immediate medical treatment could result in (1) placing the individual's (or unborn child's) health in serious jeopardy, (2) serious impairment of bodily function, or (3) serious dysfunction of any organ or part. Pain alone is not considered by the EMTALA regulations to be an emergency medical condition. (A, E) In a recent review on the topic, Dr. Robert Bitterman MD, JD, FACEP, a nationally recognized physician-attorney expert specializing in EMTALA compliance issues, uses the example of a patient with chronic low back pain complaining of severe pain. He explains that the patient does not have an emergency medical condition unless that pain is related to, for example, an aortic aneurysm rupture or a herniated disc causing neurological dysfunction where immediate treatment is necessary to avoid the imminent danger of death or serious disability. (A) Once an emergency medical condition is determined to not exist, the Medical Screening Examination is complete.

EMTALA also does not regulate nor mandate the actual treatment of pain. EMTALA only mandates the evaluation of pain as a possible symptom of an emergency medical condition. (A)

Joint Commission and Pain

The Joint Commission does have its own regulations regarding the evaluation and treatment of pain. The Joint Commission mandates a pain assessment and then either treatment of the patient's pain or referral of the patient for treatment. The Joint Commission does not mandate that a patient's pain be treated with opiate medications. (B) In Dr. Bitterman's back pain example, the ED physician may, after the MSE, decide the best treatment options include bed rest, heat packs, and referral back to the patient's primary care provider. The Joint Commission has no regulations requiring ED physicians to provide pain medications in the ED or write pain prescriptions upon discharge. (A)

EMTALA and Signage referring to Safe Prescribing Guidelines

Hospitals and State Departments of Health all across the country are developing guidelines for prescribing opioid medications in the Emergency Department for chronic pain patients. These guidelines have included patient brochures to be handed out and posters explaining the guidelines that have been hung in the waiting rooms or treatment rooms of the Emergency Departments. The intention of the posters, by well-meaning Emergency Departments, was to inform patients regarding the ED's controlled prescription policy.

Recently the CMS Atlanta Regional Office in South Carolina (Region 4) stated an opinion regarding the use of “pain posters” in EDs. Although the CMS National Office in Baltimore has not specifically addressed this issue, other CMS Regional Offices have also concurred with the recent Atlanta Regional Office’s rulings. The Region 4 opinion was also based on consultation with the CMS National Office directly. Because of the interest, it is expected that the CMS National Office may issue a national memorandum on the topic of prescription opioid signage. (C) CMS’ opinion is based on EMTALA compliance. The following bullet points are a summary of the CMS Atlanta Office’s rulings (D):

- Signage indicating a patient’s right to a Medical Screening Examination must be prominently displayed.
- Signage that refers to “Prescribing Pain Medication in the Emergency Department” or any similar language, which the hospital might choose to post in patient waiting rooms or treatment rooms, **might be considered to be coercive or intimidating to patients who present to the ED with painful medical conditions**, thereby **violating both the language and the intent of the EMTALA statute and regulations.**” (D)
- CMS is concerned that “pain posters” in the ED may discourage a patient from staying for a medical screening exam or discourage a patient from seeking care in the future.
- CMS is also concerned that a “pain poster” would also raise the question of whether or not a hospital would provide stabilizing treatment for an emergency medical condition when opioids may be appropriate.
- Hospitals that use such signage, or any signage that may have the real or perceived effect of discouraging an individual from seeking care, are at risk for being found EMTALA non-compliant.
- CMS does not appear to have an issue with the actual development of opiate prescription guidelines nor the education of patients as long as any education is done after the Medical Screening Exam has been completed.
- “It is within the bounds of reasonable professional judgment and discretion for a physician or other licensed healthcare practitioner to provide or withhold opioids and/or other methods of pain control, depending on the specific clinical circumstances of an individual’s presentation”. (D)
- “It is left to the judgment of the provider as to how best to give specific patient-centered education, including handouts, policies, and institutional protocols. But again, it is emphasized that patient education should take place after a patient focused medical screening exam is completed and not by posting general policies and procedures or displaying such materials in the waiting area.” (D)

Summary

All patients who present to the ED should have a medical screening examination to determine if an emergency medical condition exists. Any information regarding an ED’s policy about controlled substances, whether as brochures or posters, should only be given to or seen by the patient after the medical screening examination has been completed.

A. ACEP April 1, 2013 Robert Bitterman M.D., member ACEP Medical Legal Committee, *Is “Severe Pain” considered an Emergency Medical Condition under EMTALA?*

B. Joint Commission Standard PC.01.02.07: The hospital assesses and manages the patient’s pain.

C. Ohio Hospital Association Statement *Emergency Department Opiate Prescribing Guidelines* January 15, 2014

D. ACEP eNow January 22, 2014 Kevin Klauer DO, EJD, FACEP, Medical Editor in Chief and Richard Wild MD, JD, MBA, FACEP, CMS Chief Medical Officer for the Atlanta Regional Office (Region 4) *ED Waiting Room Posters on Prescribing Pain Medications May Violate EMTALA*

E. AAEM Clinical Practice Statement *Emergency Department Opioid Prescribing Guidelines for the Treatment of Non-Cancer Related Pain* 11/12/2013

Safe Pain Medicine Prescribing in Urgent Care Centers: EMTALA

This document is to aid Urgent Care Center Medical Directors in their adoption of the *L.A. County Safe Pain Medicine Prescribing in Urgent Care Centers* patient handout and how it reconciles with EMTALA.

EMTALA and Urgent Care Centers

EMTALA applies to all Medicare participating hospitals with an emergency department and applies to anyone coming to the hospital or its campus seeking emergency medical services. Under EMTALA, the hospital must provide a medical screening examination to determine whether an emergency medical condition exists and then must treat or stabilize the patient so he or she may be transferred.

It is important for every Urgent Care Center to understand how the EMTALA regulations may or may not apply to that facility. If an Urgent Care Center is a department of a hospital on the hospital campus, then the center must comply with EMTALA obligations. If the Urgent Care Center is off campus but is owned or partially owned by the hospital, then the center must comply with EMTALA obligations. If the Urgent Care Center is freestanding and independent and is not owned or partially owned by a hospital, then EMTALA does not apply.

For those Urgent Care Centers that are hospital-owned and therefore fall under EMTALA regulations, we encourage you to go to the Safe Med LA website and refer to the EMTALA and Joint Commission guidelines as it pertains to Safe Prescribing in Emergency Departments; this can be found on the webpage of the Safe Prescribing Medical Practice Action Team. In brief, the Center for Medicare and Medicaid Services (CMS) has stated that, although they agree with safe pain prescribing guidelines for emergency departments, the guidelines cannot be seen as a deterrent for a patient to seek emergency care and therefore should not be given to the patient in a form of a handout or posted in the waiting room until after the medical screening examination has been completed.

For those Urgent Care Centers that are freestanding, independent, and not hospital-owned, EMTALA obligations do not apply and therefore the Urgent Care Centers will be under fewer restrictions in regards to patient education as it pertains to safe pain prescribing. Unlike Emergency Departments, freestanding, independent Urgent Care Centers can begin patient education in regards to safe pain prescribing in the waiting room upon the patients' arrival. Urgent Care Centers who have adopted the safe prescribing guidelines have hung posters in their waiting room or made the safe prescribing handout readily available in the waiting room.

1. ACEP April 1, 2013 Robert Bitterman M.D., member ACEP Medical Legal Committee, *Is "Severe Pain" considered an Emergency Medical Condition under EMTALA?*
2. Joint Commission Standard PC.01.02.07: The hospital assesses and manages the patient's pain.
3. Ohio Hospital Association Statement *Emergency Department Opiate Prescribing Guidelines* January 15, 2014
4. ACEP eNow January 22, 2014 Kevin Klauer DO, EJD, FACEP, Medical Editor in Chief and Richard Wild MD, JD, MBA, FACEP, CMS Chief Medical Officer for the Atlanta Regional Office (Region 4) *ED Waiting Room Posters on Prescribing Pain Medications May Violate EMTALA.*
5. AAEM Clinical Practice Statement *Emergency Department Opioid Prescribing Guidelines for the Treatment of Non-Cancer Related Pain* 11/12/2013.
6. Urgent Care News M Burnstein, R Harris and L Love. Top Four Legal Issues to Consider When Opening an Urgent Care Center. Sept 2015.
7. KH Looney, MK O'Brien, J Sundock Urgent Care Centers and Free Standing Emergency Rooms: A Necessary Alternative Under the ACA American Health Lawyers Association.