# LHA IMPACT LAWBRIEF

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Louisiana Hospital Association

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**Headlines:**



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**Notices:**

**ARTICLE SUBMISSION:** The LHA Society of Hospital Attorneys encourages its members to submit articles on topics of interest. Writing an article that is published in *Lawbrief* is a great way to promote your name in the healthcare community and advertise your knowledge. If you have written an article and would like to have it considered for publication in *Lawbrief*, please email it in Word format (no PDFs please) to LHA Advocacy Coordinator Meaghan Musso at mmusso@lhaonline.org.

**LEGAL & REGULATORY EDUCATION PROGRAMS & WEBINARS**

- Aug. 2-3 Credentialing Certification Exam Prep Course - CPCS (Baton Rouge)
- Aug. 10 The 10 Step HIPAA Compliance Review - How to Ensure Your Compliance Is Up To Date (Webinar)
- Aug. 17 LDH Health Standards Program Packet Education with Hands-on Packet Completion Instructions (Baton Rouge)

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**Articles:**

## Psychiatric Medical Emergency Policies and the Largest EMTALA Penalty Ever

*By: Emily Grey*

Most hospitals are intimately familiar with the application of the Emergency Medical Treatment and Labor Act (EMTALA) in medical cases. It becomes more complex and challenging when an individual presents to a hospital's emergency department (ED) with symptoms of a psychiatric disturbance. We are seeing increased focus on these types of cases by healthcare regulators. Multiple recent enforcement actions include two settlements – $360,000 and $1.3 million – that are far afield from the "usual" $50,000 penalty (or $25,000 for smaller hospitals). From these settlements, we see how problematic practices can significantly compound penalties, particularly in psychiatric emergency cases.

A November 2016 settlement arose from a self-disclosure by Research Medical Center (RMC) in Kansas City, Missouri. The hospital self-reported an incident where a psychiatric patient was transferred in a private vehicle. On the way to the receiving hospital, the patient exited the car and was hit by another vehicle. In the investigation that followed, the surveyors reviewed not only the reported incident but also looked at the hospital's policies, as well as how other patients who presented to the ED with psychiatric emergency medical conditions were handled. The result was a finding of seventeen incidents where the hospital failed to provide adequate medical screening exams and improperly transferred or discharged psychiatric patients. RMC ultimately entered into a $360,000 settlement with the Office of Inspector General (OIG).

The biggest EMTALA penalty in history was announced just last month. In a June 2, 2017 settlement, we saw a non-profit hospital hit with the largest EMTALA fine ever: $1.3 million. It arose from incidents as far back as 2012 and 2013 that related to problematic policies for psychiatric emergencies. AnMed Health in

Anderson, South Carolina had a 15-bed behavioral health unit and a longstanding policy to accept only voluntarily admitted patients there. The policy appears to have, in part, stemmed from its lack of trained staff and security for handling the involuntarily committed patients. (The Louisiana equivalent of "involuntarily committed" would be a PEC / CEC patient). An involuntarily committed patient would be medically stabilized. Then, if the patient did not have financial resources, the attending physician could write an order for the local mental health center to evaluate the patient for admission into the state mental hospital. The patient would be held in the hospital's ED until (s)he could be transported. However, state budget cuts had led to a severe shortage of space in the state hospital, which would often prolong patient stays in the ED.

The investigation relating to these policies ultimately found issues with 36 separate incidents. The surveyors found that the hospital held unstable psychiatric patients (most of whom were suicidal and/or homicidal) in its ED for between 6 and 38 days, and during that time, the patients were not seen by on-call psychiatrists nor were they placed in available beds in the hospital's psychiatric unit. The EMTALA violations alleged by the government included a failure to provide appropriate medical screening examinations and stabilizing treatment.

AnMed did not admit liability in the settlement, but has reportedly been engaged in significant corrective action since 2015 including more than doubling the size of its inpatient psychiatric unit (from 15 to 34 beds). It is also working to make the unit more appropriate for involuntarily committed patients including adding more training for staff and security. AnMed was also very cooperative during the investigation and did more than was required to correct the issues. According to the OIG, this is why the record-setting penalty wasn't even higher. At $50,000 each, the 36 violations could have resulted in penalties of $1.8 million.

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**Lessons in Louisiana Hospital Licensure**

*By: Nicholas Gachassin, III, J.D, LL.M. and Lanzi Meyers, J.D.*

The Louisiana Hospital Licensing Law gives the Louisiana Department of Health (LDH), as the only licensing authority for hospitals in the State of Louisiana, the power to adopt rules, regulations, and minimum standards governing the operation and maintenance of hospitals. As a result, licensed hospitals are under an obligation to continuously maintain compliance with those rules, regulations, and minimum standards promulgated by LDH, which includes the timely submission of information changes to LDH's Health Standards Section. This obligation may seem overwhelming and burdensome given the ever-changing hospital environment. As a result, this article is intended to summarize some of the top hospital licensing obligations, as follows:

1. Hospitals are required to submit a licensing packet to Health Standards Section if any one of the following are met:
    - The service or area is held out to the public so that an individual thinks that he or she is receiving services from the hospital or is entering premises belonging to the hospital;
    - The service is being billed under any of the hospital's National Provider Identifier numbers; or
    - The service or area is included on the hospital's cost report.

For example, suppose a hospital purchases a physician practice, employs the physician, and begins to bill and collect for those professional services rendered in the physician practice. Further, the signage and patient consent forms now bear the hospital's logo. The hospital is obligated to submit a packet licensing that space.

2. Hospitals are required to submit a licensing packet to Health Standards Section for any change to the location of a numbered hospital room, the number of beds in a hospital room, the purpose or function of a bed or room, and the addition or deletion of inpatient beds or rooms. In addition, most changes to a licensed hospital bed will require an on-site inspection by Health Standards Section.

3. Hospitals are required to submit a licensing packet to Health Standards Section prior to the addition or deletion of any service.

4. Hospitals are required to submit a licensing packet to Health Standards Section for any change of ownership. LDH has advised that even those ownership changes that do not meet the definition of a "Change of Ownership" under the Louisiana licensing regulations must be reported to Health Standards Section. For example, this may include the sale or redemption of an owner's interest, even if such interest is minimal and does not result in a change to the hospital's tax identification number.

5. Hospitals are required to submit a licensing packet for address, name, and key personnel changes. Health Standards Section has identified key personnel as the Administrator, Director of Nursing, Medical Director of PPS-excluded hospitals or units, and Nursing Services Manager of PPS-excluded rehabilitation or psychiatric units.

While this article focuses on obligations imposed by LDH, it is important to note that hospitals may also have obligations to report changes to its accrediting body and to the Centers for Medicare and Medicaid Services.

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**Additional Challenges for Off-Campus Provider-Based Hospital Departments**
*By: Rebecca S. Helveston and Catherine Breaux Moore*

*Proposed Reduction of Payment Rates for Non-excepted Off-campus Provider-Based Hospital Departments Paid Under the Medicare Physician Fee Schedule*

Medical facilities owned by hospitals but located off-campus are facing new challenges on both the state and federal levels. CMS recently proposed a rule updating certain payment policies and rates for the Medicare Physician Fee Schedule (Proposed Rule). Among other provisions, the Proposed Rule slashes payment rates for non-excepted off-campus provider-based hospital departments that are now paid according to the Medicare Physician Fee Schedule. The Proposed Rule will be published in the Federal Register on July 21, 2017; the comment period will close on Sept. 11, 2017.

Implementation of Section 603 of the Bipartisan Budget Act of 2015 requires that certain items and services furnished by certain off-campus provider-based hospital departments are no longer paid under the Outpatient Prospective Payment System (OPPS), beginning January 2017. Instead, CMS finalized the Medicare Physician Fee Schedule as the applicable payment system for those items and services. CMS currently reimburses those services under the Medicare Physician Fee Schedule at 50 percent of the OPPS payment rate.

For calendar year 2018, CMS is proposing to reduce the current Medicare Physician Fee Schedule payment rates to twenty five percent of the current OPPS rate. The proposal would implement a fifty percent cut in the Physician Fee Schedule payment rates for non-excepted off-campus provider-based hospital departments for calendar year 2018. CMS believes that this 2018 adjustment will "encourage fairer competition between hospitals and physician practices by promoting greater payment alignment."

*New State Law Requiring Notice of Balance Billing from Healthcare Facilities, Including Off-campus Provider-Based Hospital Departments*

Hospitals should already be familiar with the Louisiana law requiring written notice to patients regarding the possible provision of services by hospital-based providers who are out-of-network. The law was amended in Act No. 306 of the 2017 Regular Legislative Session in a way that impacts not only general hospital notices, but that is also significant for hospitals with offsite campuses, and particularly provider based clinics. The changes are effective Aug. 1, 2017.

With regard to the generally applicable provisions, a hospital's written notice must inform patients that they may be responsible for all or part of the fees for out-of-network services provided by out-of-network, hospital-based practitioners. As originally drafted, if a hospital failed to provide the written notice, it was responsible for the portion of the out-of-network provider's fee not covered by insurance. However, this strict penalty was removed from the legislation. Now, hospitals must notify patients that they will be responsible for charges by those out-of-network providers. The patients must also sign a copy of the balance billing notice, and the hospital must maintain a copy in the patient records.

There are significant, new notice requirements for hospitals with off-campus provider-based departments, designed to ensure patients know that they may be charged a facility fee. The hospital must disclose to a patient receiving services at such a department that the patient may be charged a fee for use of the facility that is not included in the healthcare provider's bill, and that this fee may not be covered by the patient's health insurance. Specifically, an off-campus provider-based department must disclose: (1) that the enrollee or insured is receiving services in a hospital-based outpatient facility where the facility provides the use of the facility, medical or technical equipment, supplies, staff and services; (2) that depending on the enrollee's or insured's health insurance benefit plan and the actual services furnished by the facility, the patient may receive a facility charge billed separately from the physician that covers the fees for the use of the facility, medical, or technical equipment, supplies, staff, and services.

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