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Individual Physician Penalties Resulting From Violation of Emergency Medical Treatment and Labor Act: A Review of Office of the Inspector General Patient Dumping Settlements, 2002–2015

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Abstract

Objective: The objective was to describe characteristics of civil monetary penalty settlements levied by the Office of the Inspector General (OIG) against individual physicians related to violation of the Emergency Medical Treatment and Labor Act (EMTALA).

Methods: Descriptions of all civil monetary penalty settlements between 2002 and 2015 were obtained from the OIG. Characteristics of settlements against individual physicians related to EMTALA violations were described including settlement date, location, amount, whether there was an associated hospital settlement, the medical specialty of the physician involved, and the nature of the allegation.

Results: Of 196 OIG civil monetary penalty settlements related to EMTALA, eight (4%) were levied against individual physicians, and 188 (96%) against facilities. Seven of the eight penalties

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ST and MM conceived the study design and ST, BW, and BR obtained and reviewed data from the OIG; ST and BW managed and analyzed the data; MM and SAS provided direction regarding data analysis and display; ST and BW drafted the manuscript and all authors contributed substantially to its revision; and ST takes responsibility for the paper as a whole.

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Supporting Information

The following supporting information is available in the online version of this paper:

against individual physicians were imposed upon on-call specialists, including six who failed to respond to evaluate and treat a patient in the emergency department (ED), and one who failed to accept appropriate transfer of a patient requiring higher level of care. The only penalty imposed on an emergency physician involved a case where a provider repeatedly failed to provide a medical screening examination to a pregnant teen based on the erroneous belief that a minor could not be evaluated or treated absent parental consent. Four of eight penalties against individual physicians were levied within the first 3 years of the 14-year study period. Half of all physician settlements were associated with a separate hospital civil monetary penalty settlement.

Conclusions: For emergency physicians, a civil monetary penalty is a feared consequence of EMTALA enforcement, as a physician can be held individually liable for fine of up to \$50,000 not covered by malpractice insurance. Although EMTALA is an actively enforced law, and violation of the EMTALA statute often results in hospital citations and fines, and occasionally facility closure, we found that individual physicians are rarely penalized by the OIG following EMTALA violation. Individual physician penalties are far less common than hospital citations or fines related to EMTALA or malpractice claims or payments. The majority of penalties against individual physicians were levied upon on-call specialists who refused to evaluate and treat ED patients. Only one emergency physician was fined during the study period for a clear violation of the EMTALA statute. Physicians should be diligent to ensure appropriate patient care and that facilities are compliant with the EMTALA statute, but should be aware that settlements against individual physicians are a rare consequence of EMTALA enforcement.

The Emergency Medical Treatment and Labor Act (EMTALA) is often feared by emergency physicians.¹ Enforcement of EMTALA is delegated primarily to the regional offices of the Centers for Medicare & Medicaid Services (CMS), which authorize investigations, determine whether a violation occurred, and enforce corrective actions when violations are identified. Information regarding EMTALA violations is reviewed by the Office of the Inspector General (OIG) of the Department of Health and Human Services, which assigns civil monetary penalties to facilities and/or individual physicians found to be in violation of EMTALA.² For emergency physicians, a civil monetary penalty is a feared consequence of EMTALA enforcement, as individuals can be held liable for a fine of up to \$50,000 not covered by malpractice insurance.

Recent studies have reported that only a small proportion of EMTALA violations result in civil monetary penalties against hospitals and that penalties against individual physicians are rare.^{3,4} However, little is known about characteristics of civil monetary penalties levied against individual physicians related to violations of EMTALA. The goal of this investigation is to describe characteristics of civil monetary penalty settlements levied by the OIG against individual physicians related to EMTALA violations between 2002 and 2015.

METHODS

Descriptions of all civil monetary penalty settlements between 2002 and 2015 were obtained from the OIG website.⁵ All civil monetary penalty settlements related to EMTALA violations specifically were identified by inclusion of the terms “EMTALA” or “patient dumping” in the title or text of the settlement description for inclusion in this analysis. OIG

civil monetary penalty settlements unrelated to EMTALA (e.g., kickback allegations, fraudulent Medicare claims) were excluded from analysis.

Available synopses describing particulars of the OIG civil monetary penalty settlement agreement and circumstances of the related EMTALA violation include varying levels of detail. Entries often contained the name of the physician, associated hospital, medical specialty/on-call status of the provider, and information about the involved patient's medical condition. Specific identifiers were not consistently provided. For a complete list of all individual physician civil monetary penalty settlement entries published by OIG between 2002 and 2015, refer to Data Supplement S1 (available as supporting information in the online version of this paper).

Characteristics of settlements against individual physicians related to EMTALA violations were described including settlement date, location, amount, whether there was an associated hospital settlement, the specialty of the physician involved, and the nature of the allegation. For instances in which the specialty of the fined physician was not specifically stated, specialty was obtained by cross-referencing the physician's name with the state medical board or inferred by the nature of the emergency medical condition, or additional details regarding the case were obtained from the CMS Technical Lead (M. E. Palowitch, EMTALA Technical Lead, CMS, personal communication, 2016). This study utilized publically available data from OIG settlements, without individual patient-level identifiers, and therefore, does not qualify as human subjects research.

RESULTS

Between 2002 and 2015, a total of 196 civil monetary penalty settlements related to EMTALA were identified. Of these, 188 (96%) were levied against facilities, and eight (4%) against individual physicians. Characteristics of OIG settlements against individual physicians related to EMTALA violations are included in Table 1. The average settlement amount for an individual physician was \$25,625, with total fines against physicians amounting to \$205,000. Half of settlements against physicians were associated with a separate hospital settlement. A quarter of settlements against physicians involved cases in which a patient was specifically noted to have died. Both cases involving patient death resulted in settlements with both individual physicians and hospitals. Half of penalties against physicians occurred within the first 3 years of the 14-year study period.

Only one penalty was levied against an emergency physician. This settlement resulted after a pregnant 17-year-old presented to a Louisiana emergency department (ED) complaining of vaginal bleeding, abdominal pain, and perineal numbness. According to documentation provided by CMS, the patient presented to the ED on two separate occasions where the on-duty physician failed to provide a medical screening examination based upon the erroneous belief that the patient, who was a minor, could not be evaluated or treated absent parental consent.

The remaining seven settlements against individual physicians involved on-call specialists. In one case, a neurosurgeon was fined for refusing to accept an appropriate transfer of an

individual with an unstable emergency medical condition requiring specialized capabilities available at his institution. Three-quarters of settlements against individual physicians resulted from an on-call physician failing to respond to request to evaluate and treat an ED patient with an emergency medical condition requiring specialty care including two obstetricians, two general surgeons, an ophthalmologist, and an orthopedist.

DISCUSSION

Recent studies have demonstrated that EMTALA is an actively enforced law, with more than a quarter of U.S. hospitals cited for EMTALA violations over the past decade³ and approximately 7.9% of these violations resulting in OIG fines.⁴ For emergency physicians, civil monetary penalties are an often-feared consequence of an EMTALA citation, as fines up to \$50,000 imposed by OIG are not covered by malpractice insurance. However, our findings suggest that individual physicians are rarely targeted by OIG penalties. During the study period, there were eight settlements against individual physicians, of which only one was imposed upon an emergency physician. Comparatively, on an annual basis, 7.6% of emergency physicians face a malpractice claim, and 1.4% have a claim resulting in payment to a plaintiff.⁶

Furthermore, more than twice as many hospitals were closed or downgraded emergency services as a result of EMTALA violations than individual physicians were fined over the past decade. Between 2005 and 2014, twelve hospitals had CMS provider agreements terminated as a result of EMTALA citations, with resulting hospital closure or downgrading of emergency services at nine of these facilities.³ Over the same period, we found only four instances of individual physician penalties related to EMTALA violations (four cases described in this report occurred prior to 2005).

Although continued active enforcement of the law would suggest that physicians are not always adherent to the EMTALA statute, our findings indicate that hospitals rather than individual physicians are typically held responsible for EMTALA violations. The sole case in which an emergency physician was subject to an individual settlement involved a clear violation of the EMTALA law. Physicians still need to be diligent to ensure appropriate patient care and that facilities are compliant with the EMTALA statute, but fears of individual penalties by emergency physicians appear to be largely unwarranted.

Though rare, when settlements against physicians were levied, they were primarily against on-call specialists who refused to evaluate and treat ED patients with emergency medical conditions. Surveys of ED medical directors suggest that since passage of EMTALA, erosion of on-call panels and the ability to transfer patients for higher level of care have worsened.^{7,8} Erosion of call panels has likely reduced EMTALA liability for hospitals over time and may be contributory to the temporal decline in EMTALA citations and OIG fines against facilities noted in prior studies^{3,4} and relative rarity of OIG fines against individual physicians in the past decade of this study. Although fewer on-call physicians may limit obligations of both facilities and individual physicians to EMTALA, this is also likely to be associated with reduced access to specialty care for vulnerable populations. EMTALA was intended to ensure access to emergency care. Whether the relative rarity of individual

settlements against physicians in the last decade of the study period reflects improved access to emergency care or whether it reflects strategic reduction of call panels resulting in a paradoxical effect on access to emergency services is an important policy question that remains to be answered.

LIMITATIONS

Although this study is the most comprehensive assessment of penalties to individual physicians resulting from EMTALA citations to date, there are several potential limitations. First, findings depended on administrative data provided by the OIG and CMS and may be limited by variability in reporting of cases across regions or over time. However, we doubt systematic error in recording or reporting of data by the OIG or CMS. Furthermore, we believe that this represents the best available data source to study penalties against individual physicians. Second, available data only included cases resulting in settlement agreements to resolve civil monetary penalties. Information on cases for which penalties may have been recommended, but for which a settlement agreement was not reached was not available. Third, although OIG can impose exclusion of providers with repeated or egregious violations from future participation in CMS, information on exclusion was not included in available data. Finally, our evaluation is limited to the years for which OIG settlement data was available online. To better understand trends in OIG enforcement during the first decade and a half of EMTALA enforcement, hard copies of historic settlement agreements will need to be obtained and abstracted.

CONCLUSION

Emergency Medical Treatment and Labor Act is an actively enforced law, and violations of the Emergency Medical Treatment and Labor Act statute often result in fines and citations to hospitals and may even result in facility closure. Physicians should be diligent to ensure appropriate patient care and that facilities are compliant with the Emergency Medical Treatment and Labor Act statute, but should be aware that settlements against individual physicians are a rare consequence of Emergency Medical Treatment and Labor Act enforcement.

Supplementary Material

Refer to Web version on PubMed Central for supplementary material.

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References

1. Linzer JF. EMTALA: a clearer road in the future? *Clin Pediatr Emerg Med* 2003;4:249–55.
2. The Emergency Medical Treatment and Labor Act: The Enforcement Process. OEI-09-98-00221. Washington, DC: Office of the Inspector General, U.S. Department of Health and Human Services, 2001.

3. Terp S, Seabury SA, Arora S, Eads A, Lam CN, Menchine M. Enforcement of the Emergency Medical Treatment and Active Labor Act, 2005 to 2014. *Ann Emerg Med* 2017;69 (2):155–162. [PubMed: 27496388]
4. Zuabi N, Weiss LD, Langdorf MI. Emergency Medical Treatment and Labor Act (EMTALA) 2002-15: review of Office of Inspector General patient dumping settlements. *West J Emerg Med* 2016; 17:245–51. [PubMed: 27330654]
5. Office of Inspector General, U.S. Department of Health and Human Services. Civil Monetary Penalties and Affirmative Exclusions. Office_of_the_Inspector_General_Patient_Dumping_Websites: http://oig.hhs.gov/fraud/enforcement/cmp/patient_dumping.asp (Accessed 9 December 2015), http://oig.hhs.gov/reports-and-publications/archives/enforcement/patient_dumping_archive.asp (Accessed 7 March 2016), <http://oig.hhs.gov/fraud/enforcement/cmp/>. (Accessed Jun 15, 2016)
6. Jena AB, Seabury S, Lakdawalla D, Chandra A. Malpractice risk according to physician specialty. *N Engl J Med* 2011; 365:629–36. [PubMed: 21848463]
7. Menchine MD, Baraff LJ. On-call specialists and higher level of care transfers in California emergency departments. *Acad Emerg Med* 2008; 15:329–36. [PubMed: 18370986]
8. On-call specialist coverage in U.S. emergency departments: ACEP survey of emergency department directors. American College of Emergency Physicians, Irvine, TX: 9 2004.

Table 1

Characteristics of OIG Settlements Involving Individual Physicians

Settlement Date	State	On-call Status	Medical Specialty	Settlement Amount	Hospital Settlement, Amount	Nature of Allegation
Apr 15, 2014	Iowa	On-call	Surgery	\$35,000	No	Refusal to examine and treat patient with an EMC.
Dec 20 2011	Tennessee	On-call	Neurosurgery*	\$35,000	Yes \$45,000	Refusal to accept appropriate transfer of a patient with an EMC who required the specialized capabilities available at the physician's hospital. The patient died.
Feb 25 2009	Illinois	On-call	Orthopedics [†]	\$35,000	No	Failure to respond to a request to evaluate and treat an ED patient with an open leg fracture.
Feb 17 2006	Texas	On-call	Obstetrics	\$15,000	No	Failure to respond to a request to evaluate and treat a pregnant patient in the ED with symptoms of preeclampsia and pulmonary edema.
Jun 23, 2004	Louisiana	On duty	Emergency medicine [‡]	\$10,000	Yes \$15,000	Failure to provide MSE and stabilizing treatment to a pregnant 17-year-old in the ED with perineal numbness and vaginal bleeding. Refusal to treat reportedly based on erroneous belief that could not evaluate or treat a minor absent parental consent.
Apr 7, 2003	Virginia	On-call	Obstetrics	\$15,000	Yes \$35,000	Failure to provide appropriate MSE, stabilizing treatment, and transfer for a pregnant woman in labor.
Mar 3, 2003	California	On-call	Surgery	\$50,000	Yes \$7,500	Failure to respond to a request to evaluate and treat an ED patient.
May 9, 2002	Missouri	On-call	Ophthalmology	\$10,000	No	Failure to respond to a request to evaluate and treat an ED patient.

EMC = emergency medical condition; EMTALA = Emergency Medical Treatment and Labor Act; MSE = medical screening examination; OIG = Office of the Inspector General.

* Information regarding physician specialty obtained by cross-referencing physician name with news reports regarding reported EMTALA infraction (AIS Health, Vanderbilt Medical Center and Neurosurgeon Settle CMP Cases, Available 10 October 2016 at: <https://aishealth.com/archive/rmc022012-03>)

[†] Physician specialty inferred by nature of EMC (open leg fracture assumed to be an orthopedic specialist).

[‡] Physician specialty obtained from detailed text from the related 2567 investigation form obtained from the CMS (M. E. Palowitch, EmTaLA Technical Lead, CMS, personal communication, 2016).