

**BRIEFING ON PATIENT DUMPING**  
**U.S.COMMISSION ON CIVIL RIGHTS**  
**FEBRUARY 14, 2014**  
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Patient dumping or the premature discharge or transfer of patients who are indigent or have certain significant medical conditions is a serious concern. Today you are hearing a great deal of information about the Emergency Medical Treatment and Labor Act (EMTALA), which is enforced in part by the Centers for Medicare & Medicaid Services and by the Office of Inspector General in the Department of Health and Human Services (HHS). EMTALA requires Medicare-participating hospitals that offer emergency services to provide a medical screening examination when a request is made for examination or treatment for an emergency medical condition, regardless of an individual's ability to pay (or any other non-medical reason). Under EMTALA, if an emergency medical condition is confirmed, hospitals are prohibited from discharging such patients until stabilizing treatment is provided. Emergency medical condition patients cannot be transferred to another facility until such stabilization takes place, or unless a hospital is unable to stabilize a patient within its capability or the patient requests such a transfer, in which case, an appropriate transfer should be implemented.

The Office for Civil Rights (OCR) in HHS enforces other laws, some of which bear on patient dumping. OCR enforces Federal civil rights laws and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, which together protect individuals' fundamental rights of nondiscrimination and health information privacy. The civil rights laws OCR enforces protect people from unfair treatment or discrimination, because of race, color, national origin, disability, age, sex, or religion. Federal laws also provide conscience protections for health care providers.

The HIPAA Privacy Rule protects the privacy of individuals' health information. In addition, the Patient Safety Act and Rule establish a voluntary reporting system to enhance the data available to assess and resolve patient safety and health care quality issues and provide confidentiality protections.

OCR enforces these laws in a number of ways. OCR:

- Investigates complaints;
- Conducts compliance reviews where OCR believes an entity may have violated the law;
- Provides technical assistance to help entities voluntarily comply with the law; and
- Conducts outreach to educate individuals about their rights and entities about their responsibilities under the laws.

Where OCR identifies compliance concerns under one of the laws it enforces, OCR seeks to voluntarily bring the entity into compliance. Where OCR is unable to achieve voluntary compliance, OCR has authority to take other action as necessary to ensure compliance, including steps to terminate Federal financial assistance to the entity or to refer the case to the Department of Justice, as appropriate.

Some of the laws that OCR enforces are implicated in patient dumping. OCR enforces Section 504 of the Rehabilitation Act of 1973, which prohibits disability discrimination by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act, which prohibits disability discrimination by state and local governments. Under these laws, qualified individuals with disabilities may not be excluded from, denied participation in, or treated differently on the basis of their disability in a covered entity's programs. Thus, the denial of care to or the relocation, transfer, or discharge of an individual with a psychiatric disability on the basis of the individual's psychiatric condition or the severity of his or her mental illness by an entity that otherwise is able to provide appropriate services would be impermissible.

OCR also enforces the Hill-Burton Act. Under the Hill-Burton Act, public and other nonprofit medical facilities such as acute care general hospitals, specialty hospitals, nursing homes, public health centers, and rehabilitation facilities, received assistance in exchange for assurances to provide services. The Community Service Assurance under Titles VI and XVI of the Public Health Service Act requires recipients of Hill-Burton funds to make services provided by the facility available to persons residing or employed in the facility's service area without discrimination on the basis of race, color, national origin, or creed. In addition, a Hill-Burton facility must make **emergency** services available without discrimination on the basis of **any other ground** unrelated to the individual's need for the service or the availability of the needed service in the facility. The community service obligation does not require the facility to make **non-emergency** services available to persons unable to pay for them. It does, however, require the facility to make **emergency** services available without regard to the person's ability to pay. In addition, a facility that provides emergency services may not discharge an individual who is seeking emergency services unless the individual is stabilized or the individual no longer has an emergency medical condition. There are about 6,800 Hill-Burton facilities in the United States and the great majority of them are hospitals.

Although OCR also has separate jurisdiction to address patient dumping by facilities that received Hill-Burton funds, CMS typically reviews such cases under EMTALA. CMS also may refer cases to OCR where CMS determines that treatment of an emergency medical condition patient was delayed or denied or discharge was made without stabilization because of the person's race, color, national origin (including limited English proficiency), age, religion, sex or disability (physical or mental).

OCR's case management system is not configured to provide complaint data on "patient dumping" specifically. However, in the last 3 years, OCR has received nearly 60 referrals of cases from CMS for consideration under the Hill-Burton Act. Many of the cases alleged hospital failure to provide further examination or stabilization of a patient prior to discharge, although

OCR has not identified cases involving the transfer or relocation of patients. In instances where compliance concerns were identified, hospitals changed their policies and procedures to come into compliance, often times prior to the referral of the cases to OCR. While OCR is not in a position to assess the extent of “patient dumping” by state or local health care providers or health care providers that receive assistance from HHS, OCR does look to identify trends and systemic issues in discrimination in health care in its enforcement, and will continue to be alert to instances of patient dumping in our enforcement of civil rights laws. OCR encourages individuals or organizations who believe that a patient was discharged, relocated or transferred on a basis that is prohibited under one of the laws that OCR enforces to file a complaint.