AHRQ Studies Detail ED Use for Mental Health & Substance Abuse Disorders

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According to a News and Numbers report from the Agency for Healthcare Research and Quality (AHRQ), nearly 12 million visits made to US hospital EDs in 2007 involved people with a mental disorder, substance abuse problem or both. This accounts for one in eight of the 95 million visits to EDs by adults that year. Of these visits, about two-thirds involved patients with a mental disorder, one quarter involved patients with a substance abuse problem, and the rest involved patients with both a mental disorder and substance abuse.

AHRQ's analysis found that depression and other mood disorders accounted for 43 percent of the visits, anxiety disorders for 26 percent, and alcohol-related problems for 23 percent. In addition, 41 percent of the mental disorder and/or substance abuse-related visits resulted in hospitalization – two and a half times more than ED visits not involving those issues. Finally, concerning payer source, 21 percent were uninsured, Medicare covered 30 percent, 26 percent were privately insured, and Medicaid covered 20 percent.

AHRQ based the report on data found in its statistical brief entitled Mental Health and Substance Abuse-Related Emergency Department Visits among Adults, 2007. For a copy of the brief, go to http://www.hcup-us.ahrq.gov/reports/statsbriefs/sb92.pdf.

In addition, the Substance Abuse and Mental Health Services Administration (SAMHSA) released a new series of studies analyzing drug-related ED visits during 2008. The studies reveal that a substantial percentage of those ED visits involved suicide attempts – especially among the young. More than one in every 12 (8.8 percent) of the drug-related ED visits by an adolescent was for an attempted suicide. For cases involving young adults – those age 18 to 25 – the attempted suicide rate was 6.6 percent, and for cases involving adults – those age 25 and older – the rate was 4.4 percent. Females constituted the vast majority of the adolescents' suicide attempts (72.3 percent); and, although at a significantly lower level, females also constituted a majority of the young adults' suicide attempts (57.6 percent) as well as a majority of the attempts of those over age 25 (57.7 percent).

Prescription drugs were involved in more than nine out of ten of these drug-related suicide attempts, but the substances used differed considerably by age and gender groups. For example, acetaminophen was the most commonly used substance involved in ED visits by female adolescents attempting suicide (28.5 percent), while anti-anxiety drugs were the most commonly used substances in cases involving females age 25 or older (49.4 percent). Similarly, adolescent males admitted for drug-related suicide attempts were more than three times as likely to have used anti-psychotic drugs as their female counterparts (14.3 percent versus 4.3 percent).

The level of follow-up care also differed significantly, and often the differences were associated with the type of substance used and the age of those attempting suicide. More than 90.2 percent of adolescents who visited EDs for attempting suicide with antidepressants received follow-up care, but only 52.4 percent of the adolescent cases involving ibuprofen received therapy. As for the alcohol-related cases, 83.1 percent of those involving adolescents received follow-up care, but only 59.4 percent of those age 25 or older received treatment.

The new SAMHSA series comprises three studies entitled: Emergency Department Visits for Drug-Related Suicide Attempts by Adolescents: 2008; Emergency Department Visits for Drug-Related Suicide Attempts by Young Adults Aged 18 to 24: 2008; and Emergency Department Visits for Drug-Related Suicide Attempts by Adults Aged 25 or Older: 2008. For copies of the studies, call 1–877-726-4727 or visit http://www.samhsa.gov/.

EMTALA Does Not Preempt Tort Award Caps Against Public Hospital

On April 8, 2010, the U.S. District Court for the District of Nevada found that the Nevada Revised Statutes (NRS) 41A.035 limiting medical malpractice damages did not apply to EMTALA disparate screening claims brought by a patient who miscarried her baby after waiting several hours for medical treatment in a hospital emergency department. The court also ruled that the NRS 41.035 limiting tort awards against state entities did apply to the patient's EMTALA claims against a public medical center (Abney v. University Medical Center of Southern Nevada, D. Nev., No. 2:09-cv-2418, 4/8/10).

The Facts

On November 30, 2009, Roshunda Abney arrived at the University Medical Center of Southern Nevada's (UMC) Quick Care facility, describing her symptoms as "severe abdominal pain lasting for two days and vaginal bleeding." After an initial evaluation, the Quick Care physician indicated that Abney needed to be transferred to UMC for "higher care." Abney and her fiancé, Raffinee Dewberry, went to the UMC emergency department (ED). UMC personnel asked Abney if there were "a chance she could be pregnant and she answered yes. When asked about her pain level, Abney indicated that she was in the worse pain of her life." When Dewberry attempted to shorten Abney's wait time by petitioning various UMC staff, the "staff called security and made it clear that there was no certain time when Abney would be seen by a doctor." Abney waited for medical treatment in the ED for over five hours, during which time "she claims the UMC nursing staff berated, belittled, and embarrassed both her and her fiancé."

Abney and Dewberry left the UMC ED and drove to Valley Hospital to obtain medical care. After telling Valley's staff that they were not seen at the UMC ED after a five-hour wait, a Valley representative "allegedly responded by asking why they believed they would be seen any sooner at Valley than UMC." The couple left Valley to return to their home. Once at home, Abney's water broke and she began to deliver a baby. Dewberry called 9-1-1. The paramedics arrived and delivered the baby girl, who went into distress. Although the paramedics immediately transported the mother and child back to UMC, the baby did not survive. The baby's gestational age was estimated to be around 26 weeks (plus or minus three weeks).

Abney and Dewberry filed suit alleging EMTALA violations for failure to screen and treat Abney, and for "negligent infliction of emotional distress." On December 24, 2009, plaintiffs moved for partial summary judgment to evaluate the applicability of NRS 41A.035 and NRS 41.035 to plaintiffs' federal disparate screen claims arising under EMTALA.

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The Ruling

The district court granted the plaintiffs' motion in part and denied the motion in part, drawing on the enforcement provisions under EMTALA, which include both civil money penalties and private causes of action. Under the civil money penalties provision, negligent violations of EMTALA's requirements . . . are subject to money penalties not to exceed $50,000, whereas EMTALA's provision for civil enforcement offers a private right of action for any individual who suffers personal harm as a direct result of a hospital's violation to "obtain those damages available for personal injury under the law of the state in which the hospital is located . . ." The court suggested that by enacting this provision, "Congress explicitly directed federal courts to look to state law in the state where the hospital is located to determine both the type and amount of damages available in EMTALA actions."

Under NRS 41A.035, an injured plaintiff may recover noneconomic damages in a tort action "based upon professional negligence" against a "provider of health care," but the amount of noneconomic damages cannot exceed $350,000. The underlying conduct at issue in Abney's motion was the defendants' alleged disparate screening of Abney. To recover on an EMTALA disparate screening claim, a plaintiff must set forth evidence sufficient to support a finding that she "received a materially different screening than that provided to others in his condition." The court found that "the underlying conduct Plaintiffs describe supports a disparate screening claim, which is not based on professional negligence or subject to NRS 41A.035." Since disparate screening claims under EMTALA are not based on underlying conduct or legal theory amounting to professional negligence, the federal district court ruled that NRS 41A.035, did not apply.

In turning to NRS 41.035, the plaintiffs asked the court to declare this statute inapplicable to their EMTALA claims, asserting that NRS 41.035 "should not be applied to their claims because this action is based upon alleged violations of EMTALA, a federal statute that provides a private right of action independent of any state tort law. In distinguishing NRS 41.035, this state statute awards for damages in a tort action brought against a state actor "arising out of an act or omission within the scope of his public duties or employment may not exceed the sum of $75,000."

The plaintiffs argued that the application of NRS 41.035 to their claims would amount to a partial sovereign immunity, which would conflict with EMTALA, as determined in an Eighth Circuit case holding that "EMTALA preempted a Missouri sovereign immunity statute, which would have precluded a hospital's EMTALA liability, because the federal and state laws were in direct conflict." The federal court disagreed, citing the EMTALA provision 42 U.S.C. § 1395dd(d)(2)(A) by stating that such a reading of NRS 41.035 "ignores EMTALA's plain language that allows for 'those damages available for personal injury under the law of the state in which the hospital is located.'"

The court wrote that the plaintiffs are not "precluded from recovering on an EMTALA claim under NRS 41.035, rather they are limited to a fixed statutory amount. Federal statutes only override state law 'when state law is in actual conflict with federal law.'" The Court found that NRS 41.035 was not in "actual conflict with EMTALA because it does not obstruct Congressional intent to establish a private right of action for an EMTALA violation." Absent EMTALA preempting the application of NRS 41.035 to Abney's claims, the court concluded that NRS 41.035 applied to plaintiffs' claims against UMC.

To examine the court decision, go to: http://media.lasvegassun.com/media/pdfs/blogs/documents/2010/04/12/30_Abney_Damages_Order.040810.pdf

Inadequate Screening Claim Denied Again on Reconsideration Motion

On April 19, 2010, the U.S. District Court for the Eastern District of Oklahoma denied the plaintiffs' motion for reconsideration by finding that the plaintiffs' allegations are insufficient to state an EMTALA medical screening claim (Zinn v. Valley View Hospital, E.D. Okla., No. 09-425, 4/19/10).

The Facts

On February 15, 2008, following a motor vehicle accident, Dawn Zinn was transported to Valley View Regional Hospital's ED. Advanced life support services were rendered to Zinn during transport and the fetal heart tones of Zinn's unborn child were measured at 150 to 160 beats per minute. Upon arrival in the ED, the fetal heart tones were measured at 136-141 beats per minute. A request was made for a fetal monitor within five minutes of Zinn's arrival, but the monitor was never applied to Zinn in the ED. Approximately two hours later, when Zinn was moved to a bed, a large quantity of blood and fluid was discovered. An obstetrical physician was notified of Zinn's condition and an ultrasound machine was brought to the ED. Zinn was then moved to the obstetrical department where an emergency cesarean section was performed. Zinn's baby boy was delivered and pronounced dead, all within forty minutes of finding Zinn in distress in the ED bed.

Zinn and her husband filed an EMTALA claim contending that Valley View failed to provide "an appropriate medical screening" of Dawn Zinn and her unborn child to determine if an emergency medical condition existed. The plaintiffs also claimed that the hospital failed to stabilize Zinn's medical condition and failed to transfer her to another health care facility. Valley View moved to dismiss, arguing that "EMTALA is inapplicable to the facts as alleged . . . and that the Court should decline to exercise supplemental jurisdiction over the remaining state law medical negligence/wrongful death claims." On January 19, 2010, the court agreed with defendants, ordering that the case be dismissed in its entirety.

The plaintiffs then responded by filing a Motion to Alter or Amend a Judgment, contending that the court erred in dismissing their EMTALA claims. The Zinns argued in the motion to reconsider that "the issue of whether an appropriate medical screening was provided under EMTALA is a question of fact," not capable of being resolved by the Federal Rules of Civil Procedure Rule 12(b)(6) motion to dismiss lawsuits with insufficient legal theories underlying their cause of action.

The Ruling

In the federal court's January decision considering Valley View's motion to dismiss, the court noted that the standard of review for dismissal requires that "the complaint must give the court reason to believe that this plaintiff has a reasonable likelihood of mustering factual support for these claims. . . . when evaluating an EMTALA claim . . . the relevant inquiry is not whether the emergency room procedures were adequate, but 'only whether the hospital adhered to its own procedures.'" While the Zinns' claim speculated that what the hospital did was inadequate, it did not specify how the screening on Dawn Zinn deviated from that provided to other patients with similar injuries. The court found that the plaintiffs' complaint contained "no allegations concerning Valley View's

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emergency room screening procedures or a recitation of how Valley View supposedly violated those procedures with respect to their treatment and evaluation of Dawn Zinn." Absent such content, the plaintiffs' EMTALA claim failed because it could not cross the hurdle of rising above the speculative level. Even so, the federal court did add that "[w]hether further screening could have been performed, or whether the requested fetal monitor should have been delivered to the emergency room and applied to Dawn Zinn, are issues to be addressed in the context of state malpractice law."

Given this prior context, the court determined in April that the plaintiffs' arguments and related authorities for their motion to reconsider the court's first judgment "in connection with the propriety of resolving the EMTALA claims on Valley View's motion to dismiss . . . are virtually the same arguments and authorities considered by the court in its previous ruling." In these procedural rules, a motion to reconsider "is appropriate where the court has misapprehended the facts, a party's position, or the controlling law;" but such a motion "is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing."

As a result, the court found "no error in its application of the controlling law, specifically, the standard for evaluating a motion to dismiss." Nor did it find that the court "misapprehended any of the facts or Plaintiffs' position with respect to the allegations of their complaint." "Plaintiffs' allegations are insufficient to state an EMTALA medical screening claim," the court wrote in its decision, thus denying the plaintiffs' Motion to Alter or Amend a Judgment.

However, the federal court again determined that the Zinns' allegations are "properly addressable in the context of the medical negligence action filed by Plaintiffs in the District Court of Pontotoc County, Oklahoma." Also, the court iterated its prior finding that "even assuming Plaintiffs had adequately pled a medical screening claim under EMTALA, the undisputed evidence of treatment, i.e., the emergency cesarean section precludes recovery under EMTALA's medical screening provision."

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