

Health Care Reform Likely to Increase ER Overcrowding

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Emergency Room (ER) overcrowding is not a new problem. For years, patients have backed up ERs with long wait times and little space. Many believe this problem is due to the uninsured going to the ER, as opposed to a general practitioner, for non-emergent medical treatment. Although fewer than 5 percent of all doctors are emergency physicians, they handle over a quarter of all acute care encounters. Based on a recent study, when patients have an acute care encounter, 7 percent go to outpatient facilities, 21 percent go to specialists, 29 percent go to the emergency department, and 43 percent go to their general practitioner.¹ Recent studies suggest that more than half of the 354 million doctor visits made each year for acute medical care are not with a patient's primary care physician.² The Patient Protection and Affordable Care Act (PPACA)³ will eventually provide 32 million people who were previously uninsured with healthcare coverage. The question is whether this will help or hurt the ER-overcrowding problem in America.

The Common Misconception That ERs are Overcrowded by the Uninsured

Many believe ERs are overcrowded by the uninsured because they are abusing the Emergency Medical Treatment and Active Labor Act (EMTALA).⁴ Under EMTALA, when a patient presents him or herself to the ER complaining of an emergency medical condition, the hospital must screen the patient to determine if such a condition exists.⁵ If an emergency medical condition does exist, then the hospital must stabilize the patient, or if certain criteria are met, transfer the patient to a hospital that is better equipped to stabilize the patient.⁶

The purpose of EMTALA is to prevent "patient dumping," the practice of refusing to provide emergency medical treatment to patients unable to pay, or transferring them before emergency conditions are stabilized.⁷ Because of this, some uninsured patients who cannot afford proper medical care will wait until an emergency medical condition develops, and then seek treatment at the ER.

¹ S.R. Pitts, E.R. Carrier, E.C. Rich, *et al.*, *Where Americans Get Acute Care: Increasingly, It's Not At Their Doctor's Office*, 29:9 HEALTH AFFAIRS (2010), available at <http://content.healthaffairs.org/cgi/content/abstract/29/9/1620>.

² Kevin Sack, *Health Care Wastefulness is Detailed in Studies*, THE NEW YORK TIMES, September 7, 2010, http://www.nytimes.com/2010/09/07/health/policy/07health.html?_r=2&ref=health.

³ The Patient Protection and Affordable Care Act, Pub. L. 11-148, 124 Stat. 119 (Mar. 23, 2010), as amended by The Health Care and Education Reconciliation Act, Pub. L. 111-152, 124 Stat. 1029, (Mar. 30, 2010).

⁴ 42 U.S.C. § 1395dd(a)-(c) (2006).

⁵ *Id.*

⁶ *Id.*

⁷ *Power v. Arlington Hosp. Ass'n*, 42 F.3d 851, 856 (4th Cir. 1994).

While this may be accurate in some cases, the largest subgroups of people in the ER are not the uninsured. According to a recent study, the payer distribution for ER visits in 2006 was 17 percent by Medicare, 17 percent by the uninsured, 26 percent by Medicaid/SCHIP, and 40 percent by private insurance.⁸ While universal health care may reduce the demand for uncompensated treatment for the uninsured, ERs have more issues with overcrowding by privately-insured patients, a problem that the PPACA may worsen.⁹

Studies in Massachusetts Suggest Health Care Reform will Worsen ER Overcrowding

In 2006, Massachusetts enacted legislation mandating universal health care coverage for the majority of its residents.¹⁰ The sudden onset of such a large number of new patients placed a heavy strain on the existing shortage of primary care physicians, resulting in patients finding it difficult to schedule appointments and access care.¹¹ Many primary care providers opted to close their practices to new patients and, rather than an anticipated decrease in volume, patient visits to the ER increased 7 percent between 2005 and 2007.¹² Additionally, 50 percent of the ER visits in Massachusetts during that time did not require immediate care and could have been treated in a primary care physician's office had such physicians been available.¹³

Reasons People with Insurance go to the ER

There are several reasons that people go to the ER, regardless of whether they are covered by insurance: (1) the ER is perceived as a provider of advanced, high-quality medical care that may not be available in an outpatient setting; (2) the ER is viewed as convenient, because appointments are not required, as many people cannot access a general practitioner's office that is only open during regular business hours; (3) the ER is seen as the only access point for specialty and behavioral health services, which are often unavailable or too expensive in other settings; and (4) people often believe they have an emergency medical condition, when they actually do not.¹⁴

Also, the largest group in the ER is comprised of senior citizens, which will only grow larger as more baby boomers are preparing for retirement.¹⁵ Additionally, baby boomers are living longer, more active lives than those of past generations.¹⁶ Given the lack of

⁸ Robert Wood Johnson Found'n, *Emergency Room Department Utilization and Capacity*, July 2009, available at <http://www.rwjf.org/files/research/072109policysynthesis17.emergencyutilization.pdf>.

⁹ *Id.*

¹⁰ See CSC, *Maximizing Space Productivity in the Increasingly Crowded Emergency Department*, Sept. 2009, available at http://assets1.csc.com/health_services/downloads/CSC_Maximizing_Space_Productivity_in_the_ED.pdf.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Robert Wood Johnson Found'n, *Emergency Room Department Utilization and Capacity*, July 2009, available at <http://www.rwjf.org/files/research/072109policysynthesis17.emergencyutilization.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

primary care providers, baby boomers will significantly contribute to ER overcrowding in the years to come.¹⁷

Solutions

Fixing the problem of ER overcrowding must be attacked from all angles: laws need to be passed to create incentives for hospitals and physicians to expand access to care in other settings. Additionally, hospitals need to address overcrowding internally, and the community needs to understand when ER care is appropriate and when treatment would be better provided in a different setting.¹⁸ Many solutions are already being implemented to help address the growing problem of ER overcrowding. Some of these solutions include, but are not limited to:

- giving general practitioners incentives to see patients after hours in a primary care setting;
- activating 24-hour nurse hotlines to triage non-emergent patients to urgent care centers;
- providing incentives to hospitals to implement health information technology programs, thus reducing adverse events through better communication;
- providing doctors with incentives to practice primary care;
- enhancing the role of advance nurse practitioners and physician assistants to play a larger role in health care;
- educating the community on the types of conditions that should be treated in a clinical, rather than an ER setting;
- utilizing more hallway beds;
- adding physician and mid-level nurse practitioners in triage to screen non-emergent patients and expediting diagnostic testing for emergent patients;
- requiring a deposit or applicable co-pay for patients with non-emergency conditions;
- setting up “fast track” units in the ER equipped to treat non-emergent patients requiring only treatment by a primary care physician.¹⁹

Most of these solutions are geared towards either increasing the visiting capacity in the hospital ER or quickly redirecting patients with non-emergent needs to more appropriate care settings.²⁰

¹⁷ *Id.*

¹⁸ See CSC, *Maximizing Space Productivity in the Increasingly Crowded Emergency Department*, Sept. 2009, available at http://assets1.csc.com/health_services/downloads/CSC_Maximizing_Space_Productivity_in_the_ED.pdf.

¹⁹ *Id.*

²⁰ *Id.*

Conclusion

ER overcrowding is mostly driven by the inability to move patients out of the ER into an inpatient bed, not the use of the ER by the uninsured abusing EMTALA. Although incentives in the PPACA for physicians to practice in primary care may help divert some patients out of the ER and into a clinical setting, this alone will not be enough. To avoid the increase in ER visits that we have seen in Massachusetts, more needs to be done than legislation alone. The solution must come from all sources of the health care system – government, hospitals, and patients together.

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