

EMTALA Requirements: What You Need to Know



The Emergency Medical Treatment & Labor Act (EMTALA), often referred to as the “anti-dumping” law, was enacted by Congress in 1986 to ensure access to emergency services, regardless of an individual’s ability to pay. EMTALA requirements apply to every Medicare-participating hospital that offers emergency services. Such hospitals must provide a medical screening examination (MSE) when a request is made by an individual for examination or treatment of an emergency medical condition (EMC), including labor, regardless of their ability to pay. After the MSE, if the patient is determined to have an EMC, then the hospital is required to provide stabilizing treatment. If a hospital can’t stabilize a patient within its capability, or if the patient requests, the hospital must secure and implement an appropriate transfer.

There are differences between hospital validation and complaint surveys and an EMTALA survey:



- EMTALA surveys are solely complaint driven
- Hospitals are not routinely surveyed for EMTALA compliance as part of initial or recertification surveys
- Deemed status is irrelevant, EMTALA requirements apply to all hospitals
- In addition to termination from participation in Medicare, the Office of Inspector General can take enforcement action in the form of civil monetary penalties against hospitals and physicians

A dedicated emergency department (DED) is a department of a hospital, either on or off campus, that meets one of the following criteria:

- (1) The department licensed by the State as an emergency department/room; or
- (2) The department is held out to the public as a location for the provision of care for EMCs on an urgent basis, without a previously scheduled appointment. “Held out to the public” includes areas such as the name of the department, signage, advertising, online description of services, etc.; or
- (3) During the preceding calendar year, at least one-third of all department visits were for the treatment of EMCs on an urgent basis without a previously scheduled appointment. Bear in mind, this might include other departments where individuals may present unscheduled for evaluation and treated for EMCs, for example labor and delivery, behavioral health, and urgent care departments.



Key Provisions of EMTALA Requirements

While hospitals may be cited at any level for noncompliance with EMTALA, certain provisions result in the severest level of penalties. For instance, dedicated emergency departments must provide appropriate medical screening exams, and, if the patient has an emergency medical condition, the facility must provide stabilizing treatment without delay and without inquiries about the individual’s ability to pay.

Appropriate transfer of unstable patients is required, and receiving hospitals, even those without dedicated emergency departments, must meet certain requirements as well. MSEs must be performed by qualified medical person (QMP), identified and approved as such by the hospital’s governing body in the medical staff by-laws or in the rules and regulations. MSEs must be applied in a nondiscriminatory manner, without regard to the patient’s payment status, race, national origin, disability, sexual orientation, or any other factor. The exam must be sufficient to determine with reasonable clinical confidence that an emergency condition exists or not. Exams may not be delayed for any reason, including suggesting that patients obtain services elsewhere at lower cost or that insurance may cover treatment.

However, as long as it does not delay or discourage exam treatment, a hospital may allow for a regional registration process (for example, obtaining insurance information, identifying emergency contacts, or contacting the primary physician or health plan to obtain a history).





Emergency Medical Conditions (EMC)

Hospitals must provide necessary stabilizing treatment for emergency medical conditions, which is defined as conditions that include acute symptoms of such severity that without treatment the patient's (including unborn child) health is placed in serious jeopardy, serious impairment of bodily functions may ensue, serious dysfunction of an organ or body part is a possibility, and, if the emergency is psychiatric in nature, the patient is dangerous to himself or others. For women in labor, this means pregnant women who are having contractions, and there is inadequate time for safe transfer to another hospital, or the transfer poses a threat to the health or safety of the woman or the unborn child.



Appropriate Transfer

For patients with an EMC, an appropriate transfer to another hospital can be provided if the patient (or their representative) requests to be transferred, after the patient/representative has been informed of the hospital's obligations under EMTALA and the risks of an associated transfer. A transfer may also be provided if the physician signs and certifies that the benefits of transfer to another hospital outweigh the risks. If the physician is not physically present in the ED at the time of transfer, then a QMP may sign the risks and benefits certification after consulting with a physician, and the physician must countersign the certification in a timely manner. Additionally, treatment must be provided to minimize risks of transfer and the transfer is executed with appropriate qualified individuals, equipment, and life support measures.

The receiving hospital must obtain consent from the sending hospital and all relevant records must accompany the patient; any records that are not immediately available must be sent when they become so. Recipient hospitals are not obligated to conduct another medical screening exam when they receive the patient. However, a Medicare participating hospital that has specialized capabilities may not refuse to accept transfer of an individual who requires such specialized capabilities if the receiving hospital has the capacity to treat the individual, regardless of whether or not the receiving hospital has a dedicated emergency department.





EMTALA Requirements

Hospitals with dedicated emergency departments are required to take the following measures:

- Adopt and enforce policies and procedures related to EMTALA
- Post signs in the dedicated emergency department specifying rights of individual experiencing an emergency medical condition
- Maintain records related to individuals transferred for a period of five years
- Maintain a list of physicians who are on call to provide further evaluation and/or treat and stabilize the patient in an emergency medical condition
- Maintain the central log of individuals who come to the dedicated emergency department for treatment

Hospitals are required to maintain medical and other records related to transferred patients for a period of five years from the date of transfer – or longer, if required by the state.

Signage must be posted conspicuously and in clear, easily understood language, large enough to be read from a distance, and comply with state requirements. Signage must be posted at the entrance to the emergency department, admitting area, waiting room, and treatment areas.

As per EMTALA standards, signage must also include that, if an individual has a medical emergency or is in labor, they have the right to receive care within the capabilities capacity of the hospital, staff, and facilities; the patient has a right to receive an appropriate medical screening examination; the hospital must provide necessary stabilizing treatment, including treatment for an unborn child; transfer to another facility, if necessary; and if the hospital does or does not participate in Medicaid.



On-Call Physicians

On-call physicians also have EMTALA-dictated requirements. In accordance with resources available to the hospital, there must be positions for specialties and subspecialties available on call. They must be listed individually on the call list, not by groups for a single phone. The ED physician must have direct access to on-call physicians, and, if requested by the emergency department, an on-call physician must respond within a reasonable amount of time as set by a hospital's medical staff bylaws, policies, and procedures.



Central Log

Hospitals must maintain a central log for their dedicated emergency departments. This log is required to track the care provided to each individual who comes to the hospital seeking care for an emergency medical condition. It must include whether the individual refused treatment, was refused treatment, was admitted, treated, stabilized, transferred, or discharged.



Reporting

Recipient hospitals that suspect an individual has been transferred improperly are required to report the incident to CMS or the state survey agency within 72 hours. Improper transfers include recipient hospitals receiving a patient with an unstable emergency medical condition and so was not provided appropriate transfer; the recipient hospital did not agree in advance to accept the transfer or receive appropriate medical records; or the transfer occurred when qualified personnel, transportation, equipment, and medically appropriate life-support measures were not available (for instance, a patient who should have been transferred in a ACLS ambulance was transferred in a BLS ambulance instead); and, finally, the recipient hospital did not have the available space and qualified personnel to treat the patient.



EMTALA Penalties

Penalties are enforced directly through CMS; they may include being placed on a 23- or 90-day termination track to losing Medicare coverage. Hospitals may also be subject to civil monetary penalties of up to \$104,826 per violation, and positions are subject to penalties of varying amounts. Civil monetary penalties can be very large, as each individual violation is subject to penalty. In 2017 one hospital received civil monetary penalties that totaled \$1,295,000 in fines.

To learn about JCR CMS/Medicare and Regulatory Advisory Services, including how our experts can help you address EMTALA, please visit <https://www.jcrinc.com/products-and-services/advisory-services/cms-and-regulatory-services/>