

EMTALA Signage Requirements

Synopsis: This memo summarizes the requirement under the federal Emergency Medical Treatment and Active Labor Act (“EMTALA”) for hospitals to post signs in the emergency department as well as certain off-campus and outpatient departments. It also provides examples of the language (in English and Spanish) that can be used on EMTALA signs.

Since 1986, hospitals participating in the Medicare program must meet the EMTALA statute (Section 1867 of the Social Security Act, 42 U.S.C. § 1395dd) and its implementing regulations in 42 C.F.R. §§ 489.24, 489.20(l), (m), (q), and (r). EMTALA requires hospitals with emergency departments to screen and stabilize emergency medical conditions of all patients that come into the emergency department requesting a screening and/or treatment regardless of ability to pay.

General EMTALA Signage Requirement.

Under Section 1866 of the Social Security Act and 42 C.F.R. § 489.20(q), hospitals, including critical access hospitals, are required to post a sign (in a form specified by the U.S. Dept. of Health and Human Services (“HHS”)) specifying the rights of individuals with respect to examination and treatment for emergency medical conditions and women in labor and whether the hospital participates in Medicaid. In 2003, the Centers for Medicare & Medicaid Services (“CMS”) issued a final rule clarifying EMTALA requirements and in 2004, CMS released Interpretive Guidelines to its surveyors. The Interpretive Guidelines have been revised as of July 19, 2019.ⁱ

Under the Interpretive Guidelines, EMTALA signs must at minimum:

- Specify the rights of individuals with emergency conditions and women in labor who come to the emergency department for health care services;
- Indicate whether the facility participates in the Medicaid program;
- Contain wording that is clear and in simple terms and in language(s) that are understandable by the population served by the hospital; and
- Be conspicuously posted in the emergency department or in a place(s) likely to be noticed by all individuals entering the emergency department, as well as those individuals waiting for examination and treatment in areas other than traditional emergency departments (e.g., entrance, admitting area, waiting room, treatment area).ⁱⁱ

Signage Requirements Outside the Emergency Department.

42 C.F.R. § 489.24 defines “hospital with an emergency department” as a hospital with a “dedicated emergency department” (also defined by the regulation). The Interpretive Guidelines further clarify the meaning of “dedicated emergency department” as meeting one of the following criteria regardless of whether it is located on or off the main hospital campus. The hospital department:

- (1) is licensed by the State as an emergency room or emergency department; or
- (2) is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointmentⁱⁱⁱ; or
- (3) provides at least one-third of all of its visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment, including individuals who may present as unscheduled ambulatory patients to units (such as labor and delivery or psychiatric units of hospitals) where patients are routinely evaluated and treated for emergency medical conditions.^{iv}

The Interpretive Guidelines state that:

“[i]f an individual who is not a hospital patient comes elsewhere on hospital property^v (that is, the individual comes to the hospital but not to the dedicated emergency department), an EMTALA obligation on the part of the hospital may be triggered if either the individual requests examination or treatment for an emergency medical condition or if a prudent layperson observer would believe that the individual is suffering from an emergency medical condition.”^{vi}

Thus, outpatient departments where patients may seek care for an emergency medical condition, including off-campus locations (e.g., urgent care centers), are subject to the EMTALA signage requirement. Given the potential penalties associated with an EMTALA violation, hospitals may want to take a conservative approach and post signs in several departments in addition to the emergency department.

EMTALA Violation Fines.

The penalties associated with EMTALA violations has increased in recent years and will likely continue to increase. Effective October 11, 2018, the amount of civil monetary penalties (“CMP”) that the HHS Office of Inspector General (“OIG”) may impose increased to a maximum of \$106,965 per EMTALA violation for hospitals with 100 beds or more, and to a maximum of \$53,484 per EMTALA violation for hospitals with under 100 beds.^{vii} This is a significant increase in the penalties as, for years, the CMPs had been a maximum of \$50,000 and \$25,000, respectively.^{viii}

These new CMP amounts were released in the HHS Final Rule: Annual Civil Monetary Penalties Inflation Adjustment (“Final Rule”). Note that the Final Rule did not revise the EMTALA-stated

penalty amounts themselves; the OIG's CMP EMTALA regulations,^{ix} as well as Section 1867(d) of the Social Security Act, continue to describe the penalties as \$50,000 and \$25,000. The increased CMPs can be found at 45 C.F.R. § 102.3, which lists HHS' various CMPs as adjusted for inflation each year.

The following links provide examples of the language that can be used on EMTALA signs: [English](#) and [Spanish](#).

Last updated March 9, 2021 by Rachel Nolan, Legal Intern

This document is intended to be a guide for IHA members and does not constitute legal advice. For questions, please contact the IHA Legal Affairs Department at legal@team-ih.org or 630-276-5506.

COVID-19 Update: Please note that select regulations may have been altered or suspended in response to the COVID-19 pandemic. Consult with your legal team to learn more and determine any potential impacts.

ⁱ CMS, State Operations Manual, Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases, https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_v_emerg.pdf (Rev. 191, July 19, 2019).

ⁱⁱ *Id.* at Part II, § 489.20(q) (Rev. 46, Issued May 29, 2009, Effective/Implementation May 29, 2009).

ⁱⁱⁱ See *Friedrich v. S. Cty. Hosp. Healthcare Sys.*, 221 F. Supp. 3d 240 (D.R.I. 2016) (explaining that a hospital's urgent care facility is considered a "dedicated emergency department" and subject to EMTALA, despite the facility's website stating it offered only non-emergency care; "urgent" in the name indicates to patients that emergency services are available); *Id.* at Part I – Investigative Procedures, General Information.

^{iv} *Id.* at Part I – Investigative Procedures, General Information.

^v "The term 'hospital property' means the entire main hospital campus...including the parking lot, sidewalk and driveway or hospital departments, including any building owned by the hospital that [is] within 250 yards of the hospital." *Id.* at Part II, § 489.24(a) – Applicability of Provisions of this Section (Rev. 60, Issued July 16, 2010, Effective July 16, 2010, Effective July 16, 2010).

^{vi} *Id.*

^{vii} Annual Civil Monetary Penalties Inflation Adjustment, 83 Fed. Reg. 51,369, 51,376 (Oct. 11, 2018) (codified at 45 C.F.R. § 102.3).

^{viii} Note that the OIG's CMP regulations (42 C.F.R. part 1003) codify and provide guidance for enforcement of the OIG's authority under the Civil Monetary Penalties Law, which allows the OIG to punish violations of certain laws, including violations of EMTALA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, Pub. L. No. 114-74, § 701, HHS updates its regulations to reflect required annual inflation-related increases to CMPs. See Annual Civil Monetary Penalties Inflation Adjustment, 82 Fed. Reg. 9,175 (Feb. 3, 2017) (updating HHS' regulations to reflect inflation-related increases in 2017 to the CMPs as required by the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015).

^{ix} 42 C.F.R. § 1003.510.