Illinois Health and Hospital Association

Emergency Medical Treatment and Active Labor Act ("*EMTALA*")

What is EMTALA?

Enacted in 1986, the Emergency Medical Treatment and Active Labor Act ("***EMTALA***") was designed to prevent hospitals from transferring uninsured or Medicaid patients to public hospitals without, at a minimum, providing a medical screening examination to ensure they were stable for transfer.

Essentially, this Federal statute governs when and how a patient may be: (1) refused treatment, or (2) transferred from one hospital to another when she/he is in an unstable medical condition.

Specifically, EMTALA requires Medicare-participating hospitals with emergency departments to screen and treat the emergency medical conditions of patients in a non-discriminatory manner, regardless of their ability to pay, insurance status, national origin, race, creed or color.

Although a hospital must be a Medicare-participating hospital in order for EMTALA to apply, when it does apply, its provisions apply to all patients, and not just to Medicare patients.[1]

At the beginning of the COVID-19 pandemic, the Centers for Medicare & Medicaid Services (CMS) issued a guidance on EMTALA Requirements and Implications Related to Coronavirus Disease 2019 and Frequently Asked Questions.

What does EMTALA require?

In essence, EMTALA imposes the following on hospitals:

1. **An affirmative obligation on the part of the hospital to provide a medical screening examination to determine whether an "emergency medical condition" exists**.

   Any individual who comes to the hospital and requests care must receive a medical screening examination to determine whether an "emergency medical condition" exists. Examination and treatment cannot be delayed to inquire about methods of payment or

[1] The statute expressly provides that the Act's provisions apply to all patients "whether or not eligible for Medicare benefits". 42 USC 1395dd(a).

insurance coverage. Emergency departments also must post signs that notify patients and visitors of their rights to a medical screening examination and treatment.

If an emergency medical condition exists, treatment must be provided until the emergency medical condition is resolved or stabilized. If the hospital does not have the capability to treat the emergency medical condition, an "appropriate" transfer of the patient to another hospital must be done in accordance with the EMTALA provisions.

Hospitals with specialized capabilities are obligated to accept transfers from hospitals which lack the capability to treat unstable emergency medical conditions.

A hospital must report to CMS or the state survey agency any time it has reason to believe it may have received an individual who has been transferred in an unstable emergency medical condition from another hospital in violation of EMTALA.

2. **Restrictions on transfers of persons who exhibit an "emergency medical condition" or are in active labor, which restrictions may or may not be limited to transfers made for economic reasons**.

What is an "Emergency Medical Condition"?

The statute defines an “emergency medical condition” as:

> "A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, (ii) serious impairment to bodily functions, (iii) serious dysfunction of any bodily organ or part, or (iv) with respect to a pregnant woman who is having contractions that there is inadequate time to effect a safe transfer to another hospital before delivery, or the transfer may pose a threat to the health or safety of the woman or her unborn child."[2]

What are the requirements for transferring patients under EMTALA?

EMTALA does not apply to the transfer of stable patients. Under EMTALA, a patient is considered stable for transfer if the treating physician determines that no material deterioration of the patient's condition is likely to result from the transfer or is likely to occur during the transfer. A transfer of a patient who is not experiencing an "emergency medical condition" is permitted and is not restricted by the statute in any way.

[2] 42 U.S. Code § 1395dd(e)(1).

A transfer to another facility before the patient has become stable can only take place if it is an "appropriate transfer" under the statute.

Under EMTALA, an "appropriate transfer" (a transfer before stabilization) is one in which all of the following occur:

1. The patient has been treated at the transferring hospital, and stabilized as far as possible within the limits of its capabilities;
2. The patient needs treatment at the receiving facility, and the medical risks of transferring her/him are outweighed by the medical benefits of the transfer;
3. The weighing process as described above is certified in writing by a physician;
4. The receiving hospital has been contacted and agrees to accept the transfer, and has the facilities to provide the necessary treatment to her/him;
5. The patient is accompanied by copies of her/his medical records from the transferring hospital;
6. The transfer is effected with the use of qualified personnel and transportation equipment, as required by the circumstances, including the use of necessary and medically appropriate life support measures during the transfer.[3]

The statute provides that, if a physician is not physically present in the emergency room, the written certification in support of a transfer may be signed by a “qualified medical person” in consultation with the physician, provided that the physician agrees with the certification and subsequently countersigns it.[4]

The written certification must contain an express summary of the risks and benefits upon which it is based[5] and that the transferring hospital will forward copies of test results which become available after the transfer.[6]

What obligations are imposed on receiving hospitals?

Although most of the obligations under EMTALA are imposed on the transferring hospital, there are a couple of significant obligations imposed on the receiving hospital as well.

The statute and the regulations provide that any participating hospital which has "specialized capabilities or facilities" such as burn units, shock-trauma units, or neonatal intensive care

[3] 42 U.S. Code § 1395dd(C)(2).
[4] 42 USC 1395dd(c)(1(iii).
[5] 42 CFR 489.24(e)(1)(ii)(C).
[6] 42 CFR 489.24(e)(2)(iii).

units, or which is a "regional referral center" in a rural area, may not refuse to accept a patient in transfer, if it has the capacity to treat the individual.[7]

The receiving hospital is obligated to accept the transfer in most cases, so long as it has the ability to treat the patient and its capabilities exceed those of the referring hospital, even if only because of overcrowding or temporary unavailability of personnel.

The EMTALA regulations do obligate a participating hospital to report to CMS or the State survey agency any time it has reason to believe it may have received an individual who has been transferred in an unstable emergency medical condition from another hospital in violation of EMTALA.[8] This regulation requires reporting only when a patient has been improperly transferred; it does not require reporting other known or suspected violations.

How does EMTALA apply if a community has exhausted its supply of beds and/or ventilators and a patient presents with an emergent condition that needs these resources for stabilization?

Hospitals are required to provide stabilizing treatment to individuals determined to have an emergency medical condition within the hospital's capability prior to arranging an appropriate transfer.[9] In situations where facilities may not have the necessary services or equipment, they should provide stabilizing interventions within their capability until the individual can be transferred.[10] For example, in cases where the hospital does not have available ventilators, establishing an advanced airway and providing manual ventilation can assist in stabilizing the individual until an appropriate transfer can be arranged.[11]

What if the patient requests transfer?

A patient may request a transfer to another institution, and it appears from the wording of the statute that this request takes the place of the physician's certification, however, the transfer must still be an "appropriate transfer".

The regulations require that the request for the transfer must be made in writing, after being advised of the hospital's EMTALA obligations and of the risk of transfer, and the written request must include a statement of the risks and benefits of transfer, and the reasons for the requested transfer.[12]

Can a hospital inquire about the patient's ability to pay?

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[7] 42 USC 1395dd(g) and 42 CFR 489.24(f).
[8] 42 CFR 489.20(m).
[9] CMS "Frequently Asked Questions for Hospitals and Critical Access Hospitals regarding EMTALA", published April 30, 2020, pg. 4.
[10] Id.
[11] Id.
[12] 42 CFR 489.24(e)(1)(ii)(A).

Yes, but timing is everything. Although the statute does not prohibit an inquiry into availability of medical insurance, the requirements of EMTALA are mandatory and are unaffected by payment considerations and neither examination nor treatment may be delayed to make the inquiry.

The EMTALA regulations were amended in 2003 to specifically permit reasonable registration procedures, including inquiries about insurance, before the medical screening examination is done, as long as those inquiries do not delay the examination. A request for payment, however, may not be made at that time.

A pre-authorization requirement imposed by a managed care organization or a health insurer cannot prevent or delay the performance of a medical screening evaluation or the institution of necessary stabilizing treatment once it is determined that an emergency medical condition exists.

What are the penalties for violating EMTALA?

Both CMS and the Office of Inspector General (OIG) have administrative enforcement powers with regard to EMTALA violations. Penalties may include, but are not limited to:

- Termination of the hospital or physician's Medicare provider agreement.
- Hospital fines up to $104,826 per violation ($25,000 for a hospital with fewer than 100 beds).
- Physician fines of $50,000 per violation, including on-call physicians.
- The hospital may be sued for personal injury in civil court under a "private cause of action."
- A receiving facility, having suffered financial loss as a result of another hospital's violation of EMTALA, can bring suit to recover damages.

An adverse patient outcome, an inadequate screening examination, or malpractice action do not necessarily indicate an EMTALA violation; however, a violation can be cited even without an adverse outcome. There is no violation if a patient refuses examination.