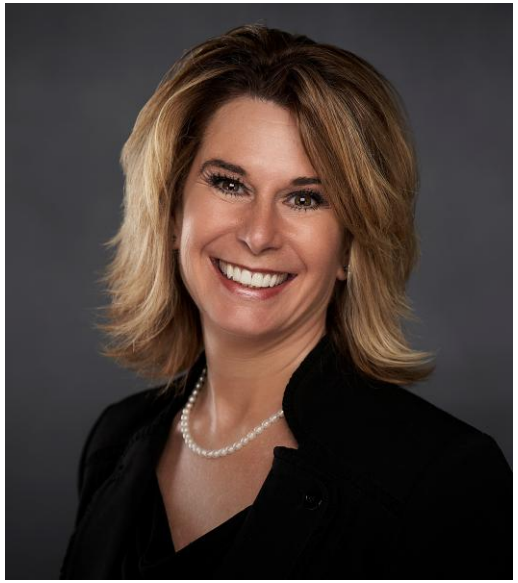
Why is EMTALA Still a Concern for Hospitals?



MHIMA/HFMA/MGMA SPRING CONFERENCE

MAY 7, 2025

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Agenda

I. EMTALA
- Fiction/Fact

II. CMS ANNOUNCEMENTS

III. CONDITIONS OF PARTICIPATION – Obstetrical
- Emergency Services' Readiness
- Transfer Protocols

IV. TO DO LIST

V. REFERENCES

EMTALA

Emergency Medical Treatment and Labor Act (EMTALA) – Enacted by Congress in 1986 to ensure public access to emergency services regardless of ability to pay.

Hospitals that offer emergency services must provide a **medical screening exam (MSE)** by **qualified medical personnel (QMP)** when request is made for exam or treatment for **emergency medical condition (EMC)** (including active labor) regardless of ability to pay.

- In addition, emergency care without regard race; color; national origin; religion; age; disability; and sex. Patient cannot be denied care if patient is not a US citizen.

EMTALA – Fiction v Fact

FICTION	FACT
Patient may not be asked about insurance.	It is acceptable to follow reasonable registration processes, including asking whether a patient is insured and, if so, what that insurance is, **as long as the inquiry does not delay screening or treatment.** The process **may not unduly discourage** patients from remaining for further evaluation.
Triage is the same as a medical screening exam (MSE).	Triage is the clinical assessment of a patient's signs and symptoms at the time of arrival in order to **prioritize** when the patient will be seen by qualified medical personnel. MSE is the process required to reach the point at which it can be **determined whether the patient has an emergency medical condition (EMC) or not**. A MSE is not an isolated event, it is an ongoing process that begins, but typically does not end, with triage.

EMTALA – Fiction v Fact

FICTION	FACT
Only a doctor is a qualified medical professional (QMP) and can perform the MSE.	A QMP is defined by the medical staff bylaws or rules and regulations. A QMP may be a physician, nurse practitioner, physician assistant, or registered nurse trained to perform a MSE.
If a patient in the hospital parking lot needs medical assistance, staff may not help and are to call 911.	Hospitals are required to provide emergency response capabilities for accidents, injuries, or patient presentations on the hospital campus, which is defined to include a **zone of 250 yards** surrounding the main hospital building. EMTALA does not apply to any off-campus facility; however, if 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 an appointment…would be included **if perceived by a prudent layperson as an appropriate place to go for emergency care**, whether or not the words “Emergency Room” or “Emergency Department” were used by the hospital to identify the departments.

EMTALA – Fiction v Fact

FICTION	FACT
A patient may **never** by transferred by private vehicle.	A patient being transferred for a higher level of care should never be transferred via a private vehicle. If the patient insists, document discussion of the risks very completely, and obtain a written, **signed refusal** of the recommended mode of transportation. This can be a pitfall…if the condition is serious enough to require transfer, they require medical observation enroute.
If an ambulance arrives while hospital is on diversion, the ambulance may be directed to go to other hospital without seeing the patient.	If the ambulance staff disregards the hospital's diversion instructions and transports the patient onto hospital property, the individual is considered to have come to the emergency department. The hospital is obligated **to conduct a medical screening exam** for the patient.

EMTALA Pathways

EMTALA

EMTALA

- Individual arrives via Emergency Medical Services
- Individual comes to the hospital or is within 250 yards of hospital on hospital property
- Transfer request from another Hospital's Emergency Department*

*Not inpatient

NOT EMTALA

NOT EMTALA

- Physicians' Offices/Clinics
  Direct Physician Admission to inpatient unit
- Telephone Contact
- Any Non-Hospital Healthcare Entity (ASCs, Nursing Homes, Urgent Care, etc.)

EMTALA Ends When

- The individual is:
  - Screened by a physician or qualified medical personnel and does not have an emergency medical condition, or
  - Stabilized to resolve the emergency medical condition, even if ongoing care is needed for an underlying medical condition, or
  - Admitted to the hospital as an inpatient in good faith (not in observation status), or
  - Transferred safely to another hospital that assumes EMTALA obligation.
- Or any time the individual refuses care.

Enforcement Actions

February 2024. Hospital Agreed to Pay $20,000 for Allegedly Violating Patient Dumping Statute by Failing to Provide an Appropriate Medical Screening Examination, Stabilizing Treatment and Transfer - *a 52-year-old female, presented to Hospital's ED at approximately 1:53 p.m. via private vehicle accompanied by two family members. The patient, who had Down Syndrome, presented with a complaint of altered mental status and was described as non-communicative and not alert. The patient had been treated at the Hospital on two occasions during the previous week and had been discharged with a Urinary Tract Infection, dehydration and anemia. Upon arrival to the ED on February 5, the patient was registered and transported by wheelchair to the ED waiting room. At 2:18 p.m., an ED physician approached the patient and her family and recommended that they seek treatment elsewhere because the Hospital was unable to treat her. At 2:23 p.m., the ED physician escorted the patient and her family out of the ED to their private vehicle. The patient was transported by wheelchair to the vehicle and was placed in the backseat of the vehicle facedown. The ED physician did not examine or treat the patient and did not make arrangements for her transfer to another facility.*

March 2024. Hospital Agreed to Pay $49,000 for Allegedly Violating Patient Dumping Statute by Failing to Provide Appropriate Medical Screening Examination - *62-year-old patient who presented to ED via emergency medical services (EMS). Prior to arrival, EMS called in a report about patient's condition to ED, hospital stated they did not have a cardiologist available and could not manage the patient. EMS continued the transport to ED. Upon arrival at ED, EMS was met in the ambulance bay by a nurse. An exchange occurred between EMS and the nurse and EMS left the ED without the patient receiving the EMTALA required medical screening exam*

EMTALA Shift

June 2022 - Dobbs v. Jackson Women's Health Organization – overturn of Roe v Wade (overturning the constitutional right to abortion)

- Variations by state

- ❑August 2022 – Missouri and Kansas hospitals violated federal law by denying a patient an emergency abortion when her water broke at 17 weeks.
- ❑June 2024 – Federal government against Idaho, claiming the states abortion laws violate federal law, claiming it violates EMTALA.
- ❑August 2024 – Texas women filed complaints against Texas hospitals they say refused to treat their ectopic pregnancies, leading women to lose their fallopian tubes endangering their fertility.

CMS Announcements

January 2024 - Educate public about their rights to emergency medical care

- Help support efforts of hospitals to meet their obligations under EMTALA

May 2024 – New option on CMS.gov to allow individuals to more easily file an EMTALA complaint.

"HHS is committed to protecting access to emergency medical care for everyone in America and making sure appropriate steps are taken if they don't get that care," said Health and Human Services (HHS) Secretary Xavier Becerra. "We will continue to uphold the law and the right to emergency care, to inform people of their rights under EMTALA, and to make it easier for someone denied care to file a complaint."

June 2024 – Focus on women's care

"As the enforcement agency for the Emergency Medical Treatment and Labor Act (EMTALA), CMS has a responsibility to the women of this country who rely on the emergency medical care they receive at the hospital emergency department. This responsibility is not theoretical — CMS' job is to investigate circumstances that have already led to some of the worst moments of women's lives, when they did not receive the stabilizing treatment they needed in an emergency. Hospitals and doctors need certainty that they can follow clinical standards of care in order to take swift action in emergency situations. I have personally spoken to women who were denied this essential health care, and their health suffered as a result. CMS will continue to enforce these protections, to the maximum extent permitted under federal law."

CMS Announcements

June 2024 – Commitment to investigate

"CMS' first responsibility is to the people we serve, including anyone who steps into the emergency department of a Medicare-participating hospital. If any individual believes their EMTALA rights have been violated, they should continue to report the circumstances to CMS or their state survey agency. To the maximum extent permitted by law, we will continue to investigate complaints and hold hospitals accountable to provide the emergency stabilizing treatment that EMTALA has required for decades."

July 2024 – Hospital duty to offer stabilizing treatment; Spanish EMTALA complaint form

Following the Supreme Court's decision in Moyle v. United States, U.S. Department of Health and Human Services Secretary Xavier Becerra and the Centers for Medicare & Medicaid Services (CMS) Administrator Chiquita Brooks-LaSure sent a letter to hospital and provider associations across the country today reminding them that it is a hospital's legal duty to offer necessary stabilizing medical treatment (or transfer, if appropriate) to all patients in Medicare-participating hospitals who are found to have an emergency medical condition. CMS also announced that the investigation of EMTALA complaints would proceed in Idaho while litigation continues in the lower courts.

In the letter, HHS and CMS also announced the launch of a Spanish-language version of the Emergency Medical Treatment and Active Labor Act (EMTALA) complaint form, the latest step taken by the Department to further educate the public about their rights to emergency medical care. The Spanish-language complaint form builds on new information resources on CMS' website to help individuals understand their protections under EMTALA and the process for submitting a complaint if they are denied emergency medical care. HHS and CMS also established a dedicated team of experts who are increasing the Department's capacity to support hospitals in complying with federal requirements under EMTALA.

CMS Announcements

August 2024 - Updated poster for hospitals to display regarding EMTALA rights for all patients.

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

Patient's Rights

You have rights in an emergency room. It's the law.

You have these protections:

1. An appropriate medical screening exam to check for an **emergency medical condition**, and if you have one,
2. Treatment until your emergency medical condition is stabilized, or
3. An appropriate transfer to another hospital if you need it

The law that gives **everyone in the U.S.** these protections is the Emergency Medical Treatment and Labor Act, also known as "EMTALA." This law helps prevent any hospital **emergency department** that receives Medicare funds (which includes most U.S. hospitals) from refusing to treat patients.

This means that a hospital emergency department must:

1. Give you an appropriate medical screening exam

A qualified professional must check you for an **emergency medical condition**.

When you check in, the hospital can ask you about health insurance, as long as it doesn't delay your exam or treatment. The hospital must offer you this screening exam, even if you don't have insurance.

2. Treat you until your condition is stable

If you have an **emergency medical condition**, which can include experiencing contractions, the hospital must offer to treat this condition so that it does not materially worsen.

3. Transfer you if necessary

If your **emergency medical condition** can't be stabilized by the staff and facilities available, the hospital must offer to provide an appropriate transfer to a hospital that has the staff and facilities available to stabilize your emergency medical condition.

Before transferring you, the hospital must explain the benefits and risks.

EMTALA exists to help you get the emergency care you need in a hospital emergency department.

Anyone with an emergency medical condition must be offered treatment to stabilize that condition. "Stabilized" means your condition is unlikely to get materially worse.

Watch a video about EMTALA

"**Emergency department**" refers to a hospital department or facility that:

- Provides emergency care if you walk in without an appointment,
- Has signs posted saying it provides emergency care, and
- Receives Medicare funds.

If you have a medical emergency or you're in labor, you have rights

In an emergency room you have the right to:

1. **An appropriate medical screening exam** to check for an emergency medical condition, and if you have one,
2. **Stabilizing treatment until your emergency medical condition is stabilized**, or
3. **An appropriate transfer** to another hospital with higher capabilities if you need it

You can't be denied your rights for any reason, including:

- If you have health insurance or not
- Your race, color, national origin, sex, religion, disability, or age
- If you can't pay for treatment
- If you aren't a U.S. citizen

Everyone in the U.S. is protected by a federal law called the Emergency Medical Treatment and Labor Act or "EMTALA."

If you believe your rights have been violated, you can file a complaint with the federal government or your State Survey Agency.

To learn more about your EMTALA rights, scan the QR code below or go to: **CMS.gov/emtala**

CMS

[Optional hospital logo]

This hospital participates in Medicaid.

Online EMTALA complaint questions:

Filing a complaint – online File an EMTALA complaint | CMS

- **Would you like to provide contact information or file anonymously?**
  - I'll provide my contact information
  - I'll remain anonymous
- **What is your relationship to the patient?**
  - I'm the patient
  - I'm filing a complaint for someone else
  - I work at this hospital
  - I prefer not to say
- **Let us know where the problem happened? Where is the hospital emergency department?**
  - US state or territory
  - Hospital name with address
- **Tell us what happened**
  - When did the problem happen? If you're not sure, give your best estimate – [date field]
  - Tell us what happened – describe the situation in detail. Be sure to include the people who were involved; what actions you took; if the hospital tried to address the situation; and the correct hospital name address if not listed above. [free text 3000 characters allowed]
- **Have you reported this problem before? (optional)**
  - If so, who did you report this problem to? [Free text 175 characters allowed]

Conditions of Participation (COP) - Obstetrical

Set of Requirements	Effective Date
Emergency services readiness	July 1, 2025
Transfer protocols	July 1, 2025
Organization, staffing, and delivery of services	January 1, 2026
Training for obstetrical staff in hospitals and critical access hospitals	January 1, 2027
Quality assessment and performance improvement program	January 1, 2027

Emergency Services Readiness

Apply to all hospitals and CAHs offering emergency services, regardless of whether they provide specialty services, such as OB.

1. Provisions and protocols to meet emergency needs of patients in accordance with the complexity and scope of services offered. **Protocols** to be consistent with **nationally recognized and evidence-based guidelines**.
   - For example, protocols must address obstetrical emergencies, complications, and immediate post-delivery care.

2. **Train** applicable staff on these provisions and protocols annually.

3. **Document** completion of training and demonstrate knowledge.

4. New emergency services **equipment, supplies, or medication** requirements for hospitals. *Requirement already exists for CAHs.*

5. Establish a **"call-in system"** for each patient in each emergency services' treatment area.

Transfer Protocols

Hospital requirement for a hospital to have written policies and procedures for transferring patients under its care to the appropriate level of care.

1. Transfer from the ER to inpatient admissions
2. Transfer between hospital inpatient units in the same hospital
3. Transfer between inpatient units at different hospitals
4. Train staff on transfer policies and procedures

To Do List

- Update EMTALA signage – CMS encourages adoption by 9/13/24
- Review and update EMTALA policies and procedures
- Provide updated EMTALA training and education
- Conduct chart reviews for medical screening examination
- Review transfers of complete documentation
- Review new Conditions of Participation – prepare phased implementation

References

EMTALA Information – EMTALA Pathways

You have rights in an emergency room under EMTALA | CMS – Patients' Rights

EMTALA Poster – EMTALA Poster

How to file an EMTALA complaint | CMS – Complaint Page

CY 2025 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Final Rule (CMS 1809-FC) | CMS – Obstetrical Services

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