

Emergency Medical Treatment and Labor Act (EMTALA)

EMTALA, or the “anti-dumping law,” is a federal law enacted in 1986. Its goal is to ensure no one suffers harm from a medical condition because they do not have insurance coverage or money to pay for their care. It requires emergency departments to stabilize and treat all persons regardless of their insurance status or ability to pay.

EMTALA further requires any Medicare-participating hospital that has an emergency department to screen and stabilize emergency medical conditions of **all** patients in a non-discriminatory manner regardless of diagnosis (example: HIV/AIDS), financial status (example: uninsured, Medicaid), race, color, national origin, or disability. EMTALA is triggered when:

- An individual comes to the emergency department or onto hospital property;
- A request for examination or treatment is made by the individual or on the individual’s behalf; or
- A prudent layperson observer would conclude from the individual’s appearance or behavior a need for examination or treatment of a medical condition.

Emergency medical condition is defined in the law as, “a 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 placing the individual’s health [or the health of an unborn child] in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of bodily organs or 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 that transfer may pose a threat to the health or safety of the woman or unborn child.”

Hospital obligations under EMTALA include:

- **Medical screening exam.** Any individual who comes and makes a request must receive a medical screening examination to determine whether an emergency medical condition exists or whether the woman is in active labor. Examination and treatment may not be delayed to inquire about methods of payment or insurance coverage. Emergency departments must post signs notifying patients and visitors of the right to a medical screening examination and treatment.
- **Stabilizing treatment.** If an emergency medical condition exists or the patient is in active labor, treatment must be provided until the emergency medical condition is resolved or stabilized.
- **Transfer requirements.** If the hospital does not have the capability to treat the condition, an “appropriate” transfer of the patient to another hospital must happen consistent with EMTALA regulations. A hospital with specialized capabilities is obligated to accept transfers from hospitals who lack the capability to treat unstable emergency medical conditions. A hospital must report to CMS if it believes it may have received a patient who has been transferred in an unstable emergency medical condition from another hospital in violation of EMTALA.

Transfers under EMTALA may be made only if a patient is stable or if certain requirements are met. A patient is considered stable for transfer if the treating physician determines no material deterioration will occur during the transfer between facilities. If a patient is unstable, the patient may only be transferred if:

- A physician certifies the medical benefits expected from the transfer outweigh the risks, or
- A patient makes a transfer request in writing after being informed of the hospital's obligations under EMTALA and the risks of the transfer.

Transfers of unstable patients must also be "appropriate," meaning that the transferring hospital must:

- Provide ongoing care within its capability until transfer in order to minimize transfer risks;
- Provide copies of medical records;
- Confirm the receiving facility has space and qualified personnel to treat the condition and has agreed to accept the transfer; and
- Ensure the transfer is made with qualified personnel and appropriate medical equipment.

Penalties for violating EMTALA include:

- Termination of the hospital Medicare provider agreement.
- Exclusion of a physician from the Medicare and Medicaid programs.
- Hospital fines – the amount of which are updated regularly: For 2020 the fines were \$111,597 per violation for hospitals with over 100 beds; and \$55,800 per violation for hospitals with less than 100 beds.
- Physician fines of \$50,000 per violation, including on-call physicians.
- A patient who suffers personal injury from violation of EMTALA may sue the hospital in civil court.
- A receiving facility that suffers financial loss as a result of another hospital's violation of EMTALA can sue to recover damages.

Sources:

American College of Emergency Physicians. (2021). *EMTALA: Fact Sheet*. Retrieved May 17, 2021 from <https://www.acep.org/life-as-a-physician/ethics--legal/emtala/emtala-fact-sheet/>

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Civil-Monetary-Penalties-Annual-Adjustments>

Consolidated Omnibus Budget Reconciliation Act (COBRA) 42 U.S.C. ss 1395dd (1985).

Moy, Mark M. (2010) *The EMTALA Answer Book: 2010 Edition*. Maryland: Aspen Publishers.

42 U.S. Code § 1395dd - Examination and treatment for emergency medical conditions and women in labor

42 CFR § 489.24 - Special responsibilities of Medicare hospitals in emergency cases

Taya Briley, RN, MN, JD
General Legal Counsel
Washington State Hospital Association
May 17. 2021