

# State Operations Manual

## Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases

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(Rev. 60, 07-16-10)

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## **Part II - Interpretive Guidelines - Responsibilities of Medicare Participating Hospitals in Emergency Cases**

The Interpretive Guidelines is a tool for surveyors where the regulation is broken into regulatory citations (tag numbers), followed by the regulation language and provides detailed interpretation of the regulation(s) to surveyors.

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### **Basic Section 1866 Commitments Relevant to Section 1867 Responsibilities – Tags A-2400/C2400 – A2405/C2405 (Rev. 46, Issued: 05-29-09, Effective/Implementation: 05-29-09)**

#### **Tag A-2400/C-2400**

(Rev. 46, Issued: 05-29-09, Effective/Implementation: 05-29-09)

#### **§489.20(1)**

**[The provider agrees to the following:]**

**(1) In the case of a hospital as defined in §489.24 (b) to comply with §489.24 .**

#### **Interpretive Guidelines: §489.20(1)**

The term “hospital” is defined in §489.24(b) as including critical access hospitals as defined in §1861(mm)(1) of the Act. Therefore, a critical access hospital that operates a dedicated emergency department (as that term is defined below) is subject to the requirements of EMTALA.

Section 42 CFR 489.20(1) of the provider’s agreement requires that hospitals comply with 42 CFR 489.24, special responsibilities of Medicare hospitals in emergency cases. Under the provisions of §489.24, hospitals with an emergency department that participate in Medicare are required under EMTALA to do the following:

- Provide an appropriate MSE to any individual who comes to the emergency department;
- Provide necessary stabilizing treatment to an individual with an EMC or an individual in labor;
- Provide for an appropriate transfer of the individual if either the individual requests the transfer or the hospital does not have the capability or capacity to

provide the treatment necessary to stabilize the EMC (or the capability or capacity to admit the individual);

- Not delay examination and/or treatment in order to inquire about the individual's insurance or payment status;
- Obtain or attempt to obtain written and informed refusal of examination, treatment or an appropriate transfer in the case of an individual who refuses examination, treatment or transfer; and
- Not take adverse action against a physician or qualified medical personnel who refuses to transfer an individual with an emergency medical condition, or against an employee who reports a violation of these requirements.

Further, any participating Medicare hospital is required to accept appropriate transfers of individuals with emergency medical conditions if the hospital has the specialized capabilities not available at the transferring hospital, and has the capacity to treat those individuals.

Hospitals are required to adopt and enforce a policy to ensure compliance with the requirements of §489.24. Noncompliance with EMTALA requirements will lead CMS to initiate procedures for termination from the Medicare program. Noncompliance may also trigger the imposition of civil monetary penalties by the Office of the Inspector General.

Surveyors review the following documents to help determine if the hospital is in compliance with the requirement(s):

- Review the bylaws, rules, and regulations of the medical staff to determine if they reflect the requirements of §489.24 and the related requirements at §489.20.
- Review the emergency department policies and procedure manuals for procedures related to the requirements of §489.24 and the related requirements at §489.20.

If a hospital violates §489.24, surveyors are to cite a corresponding violation of §489.20(1), Tag A-2400/C-2400.

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**Tag A-2405/C-2405**

**(Rev. 46, Issued: 05-29-09, Effective/Implementation: 05-29-09)**

**Section 489.20(r)(3) - A central log on each individual who “comes to the emergency department,” as defined in §489.24(b), seeking assistance and whether he or she refused treatment, was refused treatment, or whether he or she was transferred, admitted and treated, stabilized and transferred, or discharged.**

**Interpretive Guidelines: §489.20(r)(3)**

The purpose of the central log is to track the care provided to each individual who comes to the hospital seeking care for an emergency medical condition.

Each hospital has the discretion to maintain the log in a form that best meets the needs of the hospital. The central log includes, directly or by reference, patient logs from other areas of the hospital that may be considered dedicated emergency departments, such as pediatrics and labor and delivery where a patient might present for emergency services or receive a medical screening examination instead of in the “traditional” emergency department. These additional logs must be available in a timely manner for surveyor review. The hospital may also keep its central log in an electronic format.

Review the emergency department log covering at least a 6-month period that contains information on all individuals coming to the emergency department and check for completeness, gaps in entries or missing information.

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**Section 489.24 - Special Responsibilities of Medicare Hospitals in Emergency Cases (Section 1867 EMTALA Requirements – Tags A2406/C2406 – A2411/C2411)****Tag A-2406/C-2406**

***(Rev. 60, Issued: 07-16-10, Effective: 07-16-10, Implementation: 07-16-10)***

**§489.24(a) - Applicability of Provisions of this Section**

- (1) In the case of a hospital that has an emergency department, if an individual (whether or not eligible for Medicare benefits and regardless of ability to pay) “comes to the emergency department”, as defined in paragraph (b) of this section, the hospital must—**
  - (i) Provide an appropriate medical screening examination within the**

**capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists. The examination must be conducted by an individual(s) who is determined qualified by hospital bylaws or rules and regulations and who meets the requirements of [§482.55](#) of this chapter concerning emergency services personnel and direction; and**

#### **Interpretive Guidelines §489.24(a)(1)(i)**

A “hospital with an emergency department” is defined in [§489.24\(b\)](#) as a hospital with a dedicated emergency department. An EMTALA obligation is triggered for such a hospital when an individual comes by him or herself, with another person, to a hospital's **dedicated emergency department** (as that term is defined above) and a request 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**. In such a case, the hospital has incurred an obligation to provide an appropriate medical screening examination (MSE) for the individual and stabilizing treatment or an appropriate transfer. The purpose of the MSE is to determine whether or not an emergency medical condition exists.

If an individual who is not a hospital patient comes elsewhere on **hospital property** (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. The term “hospital property” means the entire main hospital campus as defined in [§413.65\(a\)](#), including the parking lot, sidewalk and driveway or hospital departments, including any building owned by the hospital that are within 250 yards of the hospital).

If an individual is registered as an outpatient of the hospital and they present on hospital property but not to a dedicated emergency department, the hospital does not incur an obligation to provide a medical screening examination for that individual if they have begun to receive a scheduled course of outpatient care. Such an individual is protected by the hospital Conditions of Participation (CoPs) that protect patient's health and safety and to ensure that quality care is furnished to all patients in Medicare-participating hospital. If such an individual experiences an EMC while receiving outpatient care, the hospital does not have an obligation to conduct an MSE for that patient. As discussed in greater detail below, such a patient has adequate protections under the Medicare CoPs and state law.

If an individual is initially screened in a department or facility on-campus outside of the ED, the individual could be moved to another hospital department or facility on-campus to receive further screening or stabilizing treatment without such movement being regarded as a transfer, as long as: (1) all persons with the same medical condition are

moved in such circumstances, regardless of their ability to pay for treatment; (2) there is bona fide medical reason to move the individual; and (3) appropriate medical personnel accompany the individual. The same is also true for an individual who presents to the dedicated emergency department (e.g., patient with an eye injury in need of stationary ophthalmology equipment located in the eye clinic) and must be moved to another hospital-owned facility or department on-campus for further screening or stabilizing treatment. The movement of the individual between hospital departments is not considered an EMTALA transfer under this section, since the individual is simply being moved from one department of a hospital to another department or facility of the same hospital.

Hospitals should not move individuals to off-campus facilities or departments (such as an urgent care center or satellite clinic) for a MSE. If an individual comes to a hospital-owned facility or department, which is off-campus and operates under the hospital's Medicare provider number, [§1867 \(42 CFR 489.24\)](#) will not apply to that facility and/or department unless it meets the definition of a dedicated emergency department.

If, however, such a facility does not meet the definition of a dedicated ED, it must screen and stabilize the patient to the best of its ability or execute an appropriate transfer if necessary to another hospital or to the hospital on whose Medicare provider number it is operated. Hospital resources and staff available at the main campus are likewise available to individuals seeking care at the off campus facilities or departments within the capability of the hospital. Movement of the individual to the main campus of the hospital is not considered a transfer since the individual is simply being moved from one department of a hospital to another department or facility of the same hospital. In addition, a transfer from such an entity (i.e., an off-campus facility that meets the definition of a dedicated ED) to a nonaffiliated hospital (i.e., a hospital that does not own the off-campus facility) is allowed where the facility at which the individual presented cannot stabilize the individual and the benefits of transfer exceed the risks of transfer. In other words, there is no requirement under EMTALA that the individual be always transferred back to the hospital that owns and operates the off-campus dedicated ED. Rather, the requirement of EMTALA is that the individual be transferred to an appropriate facility for treatment.

If a request were made for emergency care in a hospital department **off** the hospital's main campus that does not meet the definition of a dedicated emergency department, EMTALA would not apply. However, such an off-campus facility must have policies and procedures in place as how to handle patients in need of immediate care. For example, the off-campus facility policy may direct the staff to contact the emergency medical services/911 (EMS) to take the patient to an emergency department (not necessarily the emergency department of the hospital that operates the off-campus department, but rather the closest emergency department) or provide the necessary care if it is within the hospital's capability. Therefore, a hospital off-campus facility that does not meet the definition of a dedicated emergency department does not have an EMTALA obligation and not required to be staffed to handle potential EMC.

Medicare **hospitals** that do not provide emergency services must meet the standard of [§482.12 \(f\)](#) , which requires hospitals to have written policies and procedures for the appraisal of emergencies, initial treatment within its capability and capacity, and makes an appropriate referral to a hospital that is capable of providing the necessary emergency services.

If a hospital has an EMTALA obligation, it must screen individuals to determine if an EMC exists. It is not appropriate to merely “log in” an individual and not provide a MSE. An MSE is the process required to reach, with reasonable clinical confidence, the point at which it can be determined whether the individual has an EMC or not. An MSE is not an isolated event. It is an ongoing process that begins, but typically does not end, with triage.

Triage entails the clinical assessment of the individual’s presenting signs and symptoms at the time of arrival at the hospital, in order to prioritize when the individual will be seen by a physician or other qualified medical personnel (QMP).

Individuals coming to the emergency department must be provided an MSE appropriate to the individuals’ presenting signs and symptoms, as well as the capability and capacity of the hospital. Depending on the individual’s presenting signs and symptoms, an appropriate MSE can involve a wide spectrum of actions, ranging from a simple process involving only a brief history and physical examination to a complex process that also involves performing ancillary studies and procedures, such as (but not limited to) lumbar punctures, clinical laboratory tests, CT scans, and/or other diagnostic tests and procedures. The medical record must reflect continued monitoring according to the individual’s needs until it is determined whether or not the individual has an EMC and, if he/she does, until he/she is stabilized or appropriately transferred. There should be evidence of this ongoing monitoring prior to discharge or transfer.

The MSE must be the same MSE that the hospital would perform on any individual coming to the hospital’s dedicated emergency department with those signs and symptoms, regardless of the individual’s ability to pay for medical care. If a hospital applies in a nondiscriminatory manner (i.e., a different level of care must not exist based on payment status, race, national origin, etc.) a screening process that is reasonably calculated to determine whether an EMC exists, it has met its obligations under EMTALA. If the MSE is appropriate and does not reveal an EMC, the hospital has no further obligation under [42 CFR 489.24](#).

Regardless of a positive or negative individual outcome, a hospital would be in violation of the anti-dumping statute if it fails to meet any of the medical screening requirements under 42 CFR 489.24. The clinical outcome of an individual’s condition is not a proper basis for determining whether an appropriate screening was provided or whether a person transferred was stable. However, the outcome may be a “red flag” indicating that a more thorough investigation is needed. Do not make decisions base on clinical information that was not available at the time of stabilizing or transfer. If an individual was

misdiagnosed, but the hospital utilized all of its resources, a violation of the screening requirement did not occur.

It is not impermissible under EMTALA for a hospital to follow normal registration procedures for individuals who come to the emergency department. For example, a hospital may ask the individual for an insurance card, so long as doing so does not delay the medical screening examination. In addition, the hospital may seek other information (not payment) from the individual's health plan about the individual such as medical history. And, in the case of an individual with an emergency medical condition, once the hospital has conducted the medical screening examination and has initiated stabilizing treatment, it may seek authorization for all services from the plan, again, as long as doing so does not delay the implementation of the required MSE and stabilizing treatment.

A hospital that is not a managed care plan's network of designated providers cannot refuse to screen and treat (or appropriately transfer, if the medical benefits of the transfer outweigh the risks or if the individual requests the transfer) individuals who are enrolled in the plan who come to the hospital if that hospital participates in the Medicare program.

Once an individual has presented to the hospital seeking emergency care, the determination of whether an EMC exists is made by the examining physician(s) or other qualified medical personnel of the hospital.

Medicare participating hospitals that provide emergency services must provide a medical screening examination to any individual regardless of diagnosis (e.g., labor, AIDS), financial status (e.g., uninsured, Medicaid), race, and color, national origin (e.g. Hispanic or Native American surnames), and/or disability, etc.

A hospital, regardless of size or patient mix, must provide screening and stabilizing treatment within the scope of its abilities, as needed, to the individuals with emergency medical conditions who come to the hospital for examination and treatment.

"Labor" is defined to mean the process of childbirth beginning with the latent or early phase of labor and continuing through the delivery of the placenta. A woman experiencing contractions is in true labor, unless a physician, certified nurse-midwife, or other qualified medical person acting within his or her scope of practice as defined in hospital medical staff bylaws and State law, certifies that, after a reasonable time of observation, the woman is in false labor.

An infant that is born alive is a "person" and an "individual" under 1 U.S.C. 8(a) and the screening requirement of EMTALA applies to "any individual" who comes to the emergency department. If an infant was born alive in a dedicated emergency department, and a request was made on that infant's behalf for screening for a medical condition (or if a prudent layperson would conclude, based on the infant's appearance or behavior, that the infant needed examination or treatment for a medical condition), the hospital and physician could be liable for violating EMTALA for failure to provide such a medical screening examination.



If an infant is born alive elsewhere on the hospital's campus (i.e., not in the hospital's dedicated emergency department) and a prudent layperson observer would conclude, based on the born-alive infant's appearance or behavior, that the infant was suffering from an emergency medical condition, the hospital and its medical staff are required to perform a medical screening examination on the infant to determine whether or not an emergency medical condition exists. Whether in the DED or elsewhere on the hospital's campus, if the physician or other authorized qualified medical personnel performing the medical screening examination determines that the infant is suffering from an emergency medical condition, the hospital has an obligation under EMTALA to provide stabilizing treatment or an appropriate transfer. If the hospital admits the infant, its obligation under EMTALA ends.

A minor (child) can request an examination or treatment for an EMC. The hospital is required by law to conduct the examination if requested by an individual or on the individual's behalf to determine if an EMC exists. Hospital personnel should not delay the MSE by waiting for parental consent. If after screening the minor, it is determined that no EMC is present, the staff can wait for parental consent before proceeding with further examination and treatment.

On-campus provider-based entities (such as rural health clinics or physician offices) are not subject to EMTALA, therefore it would be inappropriate to move individuals to these facilities for a MSE or stabilizing treatment under this Act.

If an individual is not on hospital property (which includes a hospital owned and operated ambulance), this regulation is not applicable. Hospital property includes ambulances owned and operated by the hospital, even if the ambulance is not on the hospital campus. An individual in a non-hospital owned ambulance, which is on hospital property is considered to have come to the hospital's emergency department. An individual in a non-hospital owned ambulance not on the hospital's property is not considered to have come to the hospital's emergency department when the ambulance personnel contact "Hospital A" by telephone or telemetry communications. If an individual is in an ambulance, regardless of whether the ambulance is owned by the hospital, a hospital may divert individuals when it is in "diversionary" status because it does not have the staff or facilities to accept any additional emergency patients at that time. However, if the ambulance is owned by the hospital, the diversion of the ambulance is only appropriate if the hospital is being diverted pursuant to community-wide EMS protocols. Moreover, if any ambulance (regardless of whether or not owned by the hospital) disregards the hospital's instructions and brings the individual on to hospital campus, the individual has come to the hospital and the hospital has incurred an obligation to conduct a medical screening examination for the individual.

Hospitals that deliberately delay moving an individual from an EMS stretcher to an emergency department bed do not thereby delay the point in time at which their EMTALA obligation begins. Furthermore, such a practice of "parking" patients arriving via EMS, refusing to release EMS equipment or personnel, jeopardizes patient health and

adversely impacts the ability of the EMS personnel to provide emergency response services to the rest of the community. Hospitals that “park” patients may also find themselves in violation of 42 CFR 482.55, the Hospital Condition of Participation for Emergency Services, which requires that hospitals meet the emergency needs of patients in accordance with acceptable standards of practice.

On the other hand, this does not mean that a hospital will necessarily have violated EMTALA and/or the hospital CoPs if it does not, in every instance, immediately assume from the EMS provider all responsibility for the individual, regardless of any other circumstances in the ED. For example, there may be situations when a hospital does not have the capacity or capability at the time of the individual's presentation to provide an immediate medical screening examination (MSE) and, if needed, stabilizing treatment or an appropriate transfer. So, if the EMS provider brought an individual to the dedicated ED at a time when ED staff was occupied dealing with multiple major trauma cases, it could under those circumstances be reasonable for the hospital to ask the EMS provider to stay with the individual until such time as there were ED staff available to provide care to that individual. However, even if a hospital cannot immediately complete an appropriate MSE, it must still assess the individual's condition upon arrival to ensure that the individual is appropriately prioritized, based on his/her presenting signs and symptoms, to be seen by a physician or other QMP for completion of the MSE. The hospital should also assess whether the EMS provider can appropriately monitor the individual's condition.

Should a hospital, which is not in diversionary status, fail to accept a telephone or radio request for transfer or admission, the refusal could represent a violation of other Federal or State requirements (e.g., Hill-Burton). If you suspect a violation of related laws, refer the case to the responsible agency for investigation.

The following two circumstances will not trigger EMTALA:

- The use of a hospital's helipad by local ambulance services or other hospitals for the transport of individuals to tertiary hospitals located throughout the State does not trigger an EMTALA obligation for the hospital that has the helipad on its property when the helipad is being used for the purpose of transit as long as the sending hospital conducted the MSE prior to transporting the individual to the helipad for medical helicopter transport to a designated recipient hospital. The sending hospital is responsible for conducting the MSE prior to transfer to determine if an EMC exists and implementing stabilizing treatment or conducting an appropriate transfer. Therefore, if the helipad serves simply as a point of transit for individuals who have received a MSE performed prior to transfer to the helipad, the hospital with the helipad is not obligated to perform another MSE prior to the individual's continued travel to the recipient hospital. If, however, while at the helipad, the individual's condition deteriorates, the hospital at which the helipad is located must provide another MSE and stabilizing treatment within its capacity **if requested** by medical personnel accompanying the individual.

- If as part of the EMS protocol, EMS activates helicopter evacuation of an individual with a potential EMC, the hospital that has the helipad does not have an EMTALA obligation if they are not the recipient hospital, **unless a request** is made by EMS personnel, the individual or a legally responsible person acting on the individual's behalf for the examination or treatment of an EMC.

Hospitals are not relieved of their EMTALA obligation to screen, provide stabilizing treatment and/or an appropriate transfer to individuals because of prearranged community or State plans that have designated specific hospitals to care for selected individuals (e.g., Medicaid patients, psychiatric patients, pregnant women). Hospitals located in those States which have State/local laws that require particular individuals, such as psychiatric or indigent individuals, to be evaluated and treated at designated facilities/hospitals may violate EMTALA if the hospital disregards the EMTALA requirements and does not conduct an MSE and provide stabilizing treatment or conduct an appropriate transfer prior to referring the individual to the State/local facility. If, after conducting the MSE and ruling out an EMC (or after stabilizing the EMC) the sending hospital needs to transfer an individual to another hospital for treatment, it may elect to transfer the individual to the hospital so designated by these State or local laws. Hospitals are also prohibited from discharging individuals who have not been screened or who have an emergency medical condition to non-hospital facilities for purposes of compliance with State law. The existence of a State law requiring transfer of certain individuals to certain facilities is not a defense to an EMTALA violation for failure to provide an MSE or failure to stabilize an EMC therefore hospitals must meet the federal EMTALA requirements or risk violating EMTALA.

If a screening examination reveals an EMC and the individual is told to wait for treatment, but the individual leaves the hospital, the hospital did not “dump” the individual unless:

- The individual left the emergency department based on a “suggestion” by the hospital;
- The individual's condition was an emergency, but the hospital was operating beyond its capacity and did not attempt to transfer the individual to another facility, or
- If an individual leaves a hospital Against Medical Advice (AMA) or LWBS, on his or her own free will (no coercion or suggestion) the hospital is not in violation of EMTALA.

Hospital resources and staff available to inpatients at the hospital for emergency services must likewise be available to individuals coming to the hospital for examination and treatment of an EMC because these resources are within the capability of the hospital. For example, a woman in labor who presents at a hospital providing obstetrical services must be treated with the resources available whether or not the hospital normally provides unassigned emergency obstetrical services.

The MSE must be conducted by an individual(s) who is determined qualified by hospital by-laws or rules and regulations and who meets the requirements of [§482.55](#) concerning emergency services personnel and direction. The designation of the qualified medical personnel (QMP) should be set forth in a document approved by the governing body of the hospital. If the rules and regulations of the hospital are approved by the board of trustees or other governing body, those personnel qualified to perform the medical screening examinations may be set forth in the rules and regulations, or the hospital by-laws. It is not acceptable for the hospital to allow informal personnel appointments that could frequently change.

- (ii) If an emergency medical condition is determined to exist, provide any necessary stabilizing treatment, as defined in paragraph (d) of this section, or an appropriate transfer as defined in paragraph (e) of this section. If the hospital admits the individual as an inpatient for further treatment, the hospital's obligation under this section ends, as specified in paragraph (d)(2) of this section.**

**Interpretive Guidelines §489.24(a)(1)(ii)**

Refer to [Tag A-2407/C-2407](#) for stabilizing treatment and inpatients, and [Tag A-2409/C-2409](#) for an appropriate transfer for EMTALA.

EMTALA does not apply to hospital inpatients. The existing hospital CoPs protect individuals who are already patients of a hospital and who experience an EMC. Hospitals that fail to provide treatment to these patients may be subject to further enforcement actions.

If the surveyor discovers during the investigation that a hospital did not admit an individual in good faith with the intention of providing treatment (i.e., the hospital used the inpatient admission as a means to avoid EMTALA requirements), then the hospital is considered liable under EMTALA and actions may be pursued.

**§489.24(a)(2)**

- (i) When a waiver has been issued in accordance with Section 1135 of the Act that includes a waiver under Section 1135(b)(3) of the Act, sanctions under this section for an inappropriate transfer or for the direction or relocation of an individual to receive medical screening at an alternate location, do not apply to a hospital with a dedicated emergency department if the following conditions are met:***

- (A) The transfer is necessitated by the circumstances of the declared emergency in the emergency area during the emergency period.***

*the nature of the complaint involves actions or requirements not covered by the EMTALA waiver and warrants further on-site investigation by the SA.*

### **§489.24(c) Use of Dedicated Emergency Department for Non-emergency Services**

If an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition.

#### **Interpretive Guidelines §489.24(c)**

Any individual with a medical condition that presents to a hospital's ED must receive an MSE that is appropriate for their medical condition. The objective of the MSE is to determine whether or not an emergency medical condition exists. This does not mean that all EMTALA screenings must be equally extensive. If the nature of the individual's request makes clear that the medical condition is not of an emergency nature, the MSE is reflective of the individual presenting complaints or symptoms. A hospital may, if it chooses, have protocols that permit a QMP (e.g., registered nurse) to conduct specific MSE(s) if the nature of the individual's request for examination and treatment is within the scope of practice of the QMP (e.g., a request for a blood pressure check and that check reveals that the patient's blood pressure is within normal range). Once the individual is screened and it is determined the individual has only presented to the ED for a nonemergency purpose, the hospital's EMTALA obligation ends for that individual at the completion of the MSE. Hospitals are not obligated under EMTALA to provide screening services beyond those needed to determine that there is no EMC.

For a hospital to be exempted from its EMTALA obligations to screen individuals presenting at its emergency department for nonemergency tests (e.g., individual has consulted with physician by telephone and the physician refers the individual to a hospital emergency department for a nonemergency test) the hospital must be able to document that it is only being asked to collect evidence, not analyze the test results, or to otherwise examine or treat the individual. Furthermore, a hospital may be exempted from its EMTALA obligations to screen individuals presenting to its dedicated emergency department if the individual had a previously scheduled appointment.

If an individual presents to an ED and requests pharmaceutical services (medication) for a medical condition, the hospital generally would have an EMTALA obligation. Surveyors are encouraged to ask probing questions of the hospital staff to determine if the hospital in fact had an EMTALA obligation in this situation (e.g., did the individual present to the ED with an EMC and informed staff they had not taken their medication? Was it obvious from the nature of the medication requested that it was likely that the patient had an EMC?). The circumstances surrounding why the request is being made

would confirm if the hospital in fact has an EMTALA obligation. If the individual requires the medication to resolve or provide stabilizing treatment of an EMC, then the hospital has an EMTALA obligation. Hospitals are not required by EMTALA to provide medication to individuals who do not have an EMC simply because the individual is unable to pay or does not wish to purchase the medication from a retail pharmacy or did not plan appropriately to secure prescription refills.

If an individual presents to a dedicated emergency department and requests services that are not for a medical condition, such as preventive care services (immunizations, allergy shots, flu shots) or the gathering of evidence for criminal law cases (e.g., sexual assault, blood alcohol test), the hospital is not obligated to provide a MSE under EMTALA to this individual.

Attention to detail concerning blood alcohol testing (BAT) in the ED is instrumental when determining if a MSE is to be conducted. If an individual is brought to the ED and law enforcement personnel request that emergency department personnel draw blood for a **BAT only** and does not request examination or treatment for a medical condition, such as intoxication and a prudent lay person observer would not believe that the individual needed such examination or treatment, then the EMTALA's screening requirement is not applicable to this situation because the only request made on behalf of the individual was for evidence. However, if for example, the individual in police custody was involved in a motor vehicle accident or may have sustained injury to him or herself and presents to the ED a MSE would be warranted to determine if an EMC exists.

When law enforcement officials request hospital emergency personnel to provide clearance for incarceration, the hospital has an EMTALA obligation to provide a MSE to determine if an EMC exists. If no EMC is present, the hospital has met its EMTALA obligation and no further actions are necessary for EMTALA compliance.

Surveyors will evaluate each case on its own merit when determining a hospital's EMTALA obligation when law enforcement officials request screening or BAT for use as evidence in criminal proceedings. This principle also applies to sexual assault cases.

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**Tag A-2407/C-2407**

(Rev. 46, Issued: 05-29-09, Effective/Implementation: 05-29-09)

**§489.24(d) Necessary Stabilizing Treatment for Emergency Medical Conditions**

**(1) General. Subject to the provisions of paragraph (d)(2) of this section, if any individual (whether or not eligible for Medicare benefits) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either--**

- (i) Within the capabilities of the staff and facilities available at the hospital, for further medical examination and treatment as required to stabilize the medical condition.**

**Interpretive Guidelines §489.24(d)(1)(i)**

A hospital is obligated to provide the services specified in the statute and this regulation regardless of whether a hospital will be paid. After the medical screening has been implemented and the hospital has determined that an emergency medical condition exists, the hospital must provide stabilizing treatment within its capability and capacity.

Capabilities of a medical facility mean that there is physical space, equipment, supplies, and specialized services that the hospital provides (e.g., surgery, psychiatry, obstetrics, intensive care, pediatrics, trauma care).

Capabilities of the staff of a facility means the level of care that the personnel of the hospital can provide within the training and scope of their professional licenses. This includes coverage available through the hospitals on-call roster.

The capacity to render care is not reflected simply by the number of persons occupying a specialized unit, the number of staff on duty, or the amount of equipment on the hospital's premises. Capacity includes whatever a hospital customarily does to accommodate patients in excess of its occupancy limits §489.24 (b). If a hospital has customarily accommodated patients in excess of its occupancy limits by whatever means (e.g., moving patients to other units, calling in additional staff, borrowing equipment from other facilities) it has, in fact, demonstrated the ability to provide services to patients in excess of its occupancy limits.

A hospital may appropriately transfer (see Tag A-2409/C-2409) an individual before the sending hospital has used and exhausted all of its resources available if the individual requests the transfer to another hospital for his or her treatment and refuses treatment at the sending hospital.

To comply with the MSE and stabilization requirements of §1867 all individuals with similar medical conditions are to be treated consistently. Compliance with local, State, or regionally approved EMS transport of individuals with an emergency is usually deemed to indicate compliance with §1867; however a copy of the protocol should be obtained and reviewed at the time of the survey.

If community wide plans exist for specific hospitals to treat certain EMCs (e.g., psychiatric, trauma, physical or sexual abuse), the hospital must meet its EMTALA obligations (screen, stabilize, and or appropriately transfer) prior to transferring the individual to the community plan hospital. An example of a community wide plan would be a trauma system hospital. A trauma system is a comprehensive system providing injury prevention services and timely and appropriate delivery of emergency medical treatment for people with acute illness and traumatic injury. These systems are designed so that patients with catastrophic injuries will have the quickest possible access to an established trauma center or a hospital that has the capabilities to provide comprehensive emergency medical care. These systems ensure that the severely injured patient can be rapidly cared for in the facility that is most appropriately prepared to treat the severity of injury.

Community plans (not a formal community call plan provided for under §489.24(j)(iii)) are designed to provide an organized, pre-planned response to patient needs to assure the best patient care and efficient use of limited health care resources. Community plans are designed to augment physician's care if the necessary services are not within the capability of the hospital but does not mandate patient care nor transfer patterns. Patient health status frequently depends on the appropriate use of the community plans. The matching of the appropriate facility with the needs of the patient is the focal point of this plan and assures every patient receives the best care possible. Therefore, a sending hospital's appropriate transfer of an individual in accordance with community wide protocols in instances where it cannot provide stabilizing treatment would be deemed to indicate compliance with §1867.

If an individual seeking care is a member of a managed health care plan (e.g., HMO, PPO or CMP), the hospital is obligated to comply with the requirements of §489.24 regardless of the individual's payor source or financial status. The hospital is obligated to provide the services necessary to determine if an EMC is present and provide stabilizing treatment if indicated. This is true regardless if the individual is enrolled in a managed care plan that restricts its enrollees' choice of health care provider. EMTALA is a requirement imposed on hospitals, and the fact that an individual who comes to the hospital is enrolled in a managed care plan that does not contract with that hospital has no bearing on the obligation of the hospital to conduct an MSE and to at least initiate stabilizing treatment. A managed health care plan may only state the services for which it will pay or decline payment, but that does not excuse the hospital from compliance with EMTALA.



Section 42 CFR 489.24(b) defines **stabilized** to mean:

“... that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or with respect to an “emergency medical condition” as defined in this section under paragraph (2) of that definition, that a woman has delivered the child and the placenta.”

The regulation sets the standard determining when a patient is stabilized.

If a hospital is unable to stabilize an individual within its capability, an appropriate transfer should be implemented. To be considered stable the emergency medical condition that caused the individual to seek care in the dedicated ED must be resolved, although the underlying medical condition may persist. For example, an individual presents to a hospital complaining of chest tightness, wheezing, and shortness of breath and has a medical history of asthma. The physician completes a medical screening examination and diagnoses the individual as having an asthma attack that is an emergency medical condition. Stabilizing treatment is provided (medication and oxygen) to alleviate the acute respiratory symptoms. In this scenario the EMC was resolved and the hospital’s EMTALA obligation is therefore ended, but the underlying medical condition of asthma still exists. After stabilizing the individual, the hospital no longer has an EMTALA obligation. The physician may discharge the individual home, admit him/her to the hospital, or transfer (the “appropriate transfer” requirement under EMTALA does not apply to this situation since the individual has been stabilized) the individual to another hospital depending on his/her needs. The preceding example does not reflect a change in policy, rather it is a clarification as to when an appropriate transfer is to be implemented to decrease hospitals risk of being in violation of EMTALA due to inappropriate transfers

An individual will be deemed stabilized if the treating physician or QMP attending to the individual in the emergency department/hospital has determined, within reasonable clinical confidence, that the emergency medical condition has been resolved.

For those individuals whose EMCs have been resolved the physician or QMP has several options:

- **Discharge home with follow-up instructions.** An individual is considered stable and ready for discharge when, within reasonable clinical confidence, it is determined that the individual has reached the point where his/her continued care, including diagnostic work-up and/or treatment, could be reasonably performed as an outpatient or later as an inpatient, provided the individual is given a plan for appropriate follow-up care as part of the discharge instructions. The EMC that caused the individual to present to the dedicated ED must be resolved, but the underlying medical condition may persist. Hospitals are expected within reason to assist/provide discharged individuals the necessary information to secure the

necessary follow-up care to prevent relapse or worsening of the medical condition upon release from the hospital; or

- **Inpatient admission for continued care.**

Hospitals are responsible for treating and stabilizing, within their capacity and capability, any individual who presents him/herself to a hospital with an EMC. The hospital must provide care until the condition ceases to be an emergency or until the individual is properly transferred to another facility. An inappropriate transfer or discharge of an individual with an EMC would be a violation of EMTALA.

If a hospital is alleged to have violated EMTALA by transferring an unstable individual without implementing an appropriate transfer according to §489.24(e), and the hospital believes that the individual was stable (EMC resolved) the burden of proof is the responsibility of the transferring hospital. When interpreting the facts the surveyor should assess whether or not the individual was stable. Was it reasonable to believe that the transferring hospital should have been knowledgeable of the potential complications during transport? To determine whether the individual was stable and treated appropriately surveyors will request that the QIO physician review the case. If the treating physician is in doubt that an individual's EMC is stabilized the physician should implement an appropriate transfer (see [Tag A-2409/C-2409](#)) to prevent a potential violation of EMTALA, if his/her hospital cannot provide further stabilizing treatment.

If a physician is not physically present at the time of transfer, then the qualified medical personnel (as determined by hospital bylaws or other board-approved documents) must consult with a physician to determine if an individual with an EMC is to be transferred to another facility for further stabilizing treatment.

The failure of a receiving facility to provide the care it maintained it could provide to the individual when the transfer was arranged should not be construed to mean that the individual's condition worsened as a result of the transfer.

In the case of psychiatric emergencies, if an individual expressing suicidal or homicidal thoughts or gestures, if determined dangerous to self or others, would be considered to have an EMC.

Psychiatric patients are considered stable when they are protected and prevented from injuring or harming him/herself or others. The administration of chemical or physical restraints for purposes of transferring an individual from one facility to another may stabilize a psychiatric patient for a period of time and remove the immediate EMC but the underlying medical condition may persist and if not treated for longevity the patient may experience exacerbation of the EMC. Therefore, practitioners should use great care when determining if the medical condition is in fact stable after administering chemical or physical restraints.

A hospital's EMTALA obligation ends when a physician or qualified medical person has made a decision:

- That no emergency medical condition exists (even though the underlying medical condition may persist);
- That an emergency medical condition exists and the individual is appropriately transferred to another facility; or
- That an emergency medical condition exists and the individual is admitted to the hospital for further stabilizing treatment.

**(ii) For transfer of the individual to another medical facility in accordance with paragraph (e) of this section.**

**Interpretive Guidelines: §489.24(d)(1)(ii)**

When a hospital has exhausted all of its capabilities in attempting to resolve the EMC, it must effect an appropriate transfer of the individual (see Tag A-2409/C-2409). Section 42 CFR 489.24(b) defines **transfer** to mean:

“... the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (i) has been declared dead, or (ii) leaves the facility without the permission of any such person.”

If an individual is admitted as an inpatient, EMCs must be stabilized either by the hospital to which an individual presents or the hospital to which the individual is transferred. If a woman is in labor, the hospital must deliver the baby and the placenta or transfer appropriately. She may not be transferred unless she, or a legally responsible person acting on her behalf, requests a transfer and a physician or other qualified medical personnel, in consultation with a physician, certifies that the benefits to the woman and/or the unborn child outweigh the risks associated with the transfer.

If the individual's condition requires immediate medical stabilizing treatment and the hospital is not able to attend to that individual because the emergency department is operating beyond its capacity, then the hospital should transfer the individual to a hospital that has the capability and capacity to treat the individual's EMC.

**(2) Exception: Application to Inpatients.**

- (i) If a hospital has screened an individual under paragraph (a) of this section and found the individual to have an emergency medical condition, and admits that individual as an inpatient in good faith in order to stabilize the emergency medical condition, the hospital has satisfied its special responsibilities under this section with respect to that individual**

**Interpretive Guidelines: §489.24(d)(2)(i)**

A hospital's EMTALA obligation ends when the individual has been admitted in good faith for inpatient hospital services whether or not the individual has been stabilized. An individual is considered to be "admitted" when the decision is made to admit the individual to receive inpatient hospital services with the expectation that the patient will remain in the hospital at least overnight. Typically, we would expect that this would be documented in the patient's chart and medical record at the time that a physician signed and dated the admission order. Hospital policies should clearly delineate, which practitioners are responsible for writing admission orders.

A hospital continues to have a responsibility to meet the patient emergency needs in accordance with hospital CoPs at 42 CFR Part 482. The hospital CoPs protect individuals who are admitted, and they do not permit the hospital to inappropriately discharge or transfer any patient to another facility. The hospital CoPs that are most relevant in this case are as follows: emergency services, governing body, discharge planning, quality assurance and medical staff.

Hospitals are responsible for assuring that inpatients receive acceptable medical care upon admission. Hospital services for inpatients should include diagnostic services and therapeutic services for medical diagnosis, treatment, and care of the injured, disabled or sick persons with the intention of treating patients.

If during an EMTALA investigation there is a question as to whether an individual was admitted so that a hospital could avoid its EMTALA obligation, the SA surveyor is to consult with RO personnel to determine if the survey should be expanded to a survey of the hospital CoPs. After completion of the survey, the case is to be forwarded to the RO for violation determination. If it is determined that the hospital admitted the individual solely for the purpose of avoiding its EMTALA obligation, then the hospital is liable under EMTALA and may be subject to further enforcement action.

- (ii) This section is not applicable to an inpatient who was admitted for elective (non-emergency) diagnosis or treatment.**

**Interpretive Guidelines: §489.24(d)(2)(ii)**

Individuals admitted to the hospital for elective medical services are not protected by EMTALA. The hospital CoPs protect all classifications of inpatients, elective and emergent.

- (iii) A hospital is required by the conditions of participation for hospitals under Part 482 of this chapter to provide care to its inpatients in accordance with those conditions of participation.**

**Interpretive Guidelines: §489.24(d)(2)(iii)**

If an inpatient develops an EMC, the hospital is required to meet the patient's emergency needs in accordance with acceptable standards of practice. The hospital CoPs protects patients who are admitted, and the hospital may not discharge or transfer any patient to another facility inappropriately. The protective CoPs are found at 42 CFR Part 482. The five CoPs that are most relevant in affording patients protection in cases when patients with an EMC is admitted are as follows:

- Emergency services (§482.55)
- Governing body (§482.12)
- Discharge planning (§482.43)
- Quality assessment and performance improvement (§482.21)
- Medical staff (§482.22)

If a hospital is noncompliant with any of the above COPs, the hospital will be subject to enforcement action.

**(3) Refusal to consent to treatment.**

**A hospital meets the requirements of paragraph (d)(1)(i) of this section with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) does not consent to the examination or treatment. The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of the person acting on his or her behalf). The written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.**

### **Interpretive Guidelines: §489.24(d)(3)**

The medical record should reflect that screening, further examination, and or treatment were offered by the hospital prior to the individual's refusal.

In the event an individual refuses to consent to further examination or treatment, the hospital must indicate in writing the risks/benefits of the examination and/or treatment; the reasons for refusal; a description of the examination or treatment that was refused; and the steps taken to try to secure the written, informed refusal if it was not secured.

Hospitals may not attempt to coerce individuals into making judgments against their interest by informing them that they will have to pay for their care if they remain but that their care will be free or at a lower cost if they transfer to another hospital.

An individual may only refuse examination, treatment, or transfer on behalf of a patient if the patient is incapable of making an informed choice for him/herself.

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### **Tag A-2408/C-2408**

**(Rev. 46, Issued: 05-29-09, Effective/Implementation: 05-29-09)**

### **§489.24(d)(4) and (5)**

#### **(4) Delay in Examination or Treatment.**

- (i) A participating hospital may not delay providing an appropriate medical screening examination required under paragraph (a) of this section or further medical examination and treatment required under paragraph (d)(1) of this section in order to inquire about the individual's method of payment or insurance status.**
- (ii) A participating hospital may not seek, or direct an individual to seek, authorization from the individual's insurance company for screening or stabilization services to be furnished by a hospital, physician, or non-physician practitioner to an individual until after the hospital has provided the appropriate medical screening examination required under paragraph (a) of this section, and initiated any further medical examination and treatment that may be required to stabilize the emergency medical condition under paragraph (d)(1) of this section.**
- (iii) An emergency physician or non-physician practitioner is not precluded from contacting the individual's physician at any time to seek advice regarding the individual's medical history and needs that may be relevant to the medical treatment and screening of the patient, as long as this consultation does not inappropriately delay services required under paragraph (a) or paragraphs (d)(1) and (d)(2) of this section.**

- (iv) Hospitals may follow reasonable registration processes for individuals for whom examination or treatment is required by this section, including asking whether an individual is insured and, if so, what that insurance is, as long as that inquiry does not delay screening or treatment. Reasonable registration processes may not unduly discourage individuals from remaining for further evaluation.**

**Interpretive Guidelines §489.24(d)(4)(i),(ii),(iii) and (iv)**

Hospitals should not delay providing a medical screening examination or necessary stabilizing treatment by inquiring about an individual's ability to pay for care. All individuals who present to a hospital and request an MSE for a medical condition (or have a request for an MSE made on their behalf) must receive that screening examination, regardless of the answers the individual may give to the insurance questions asked during the registration process. In addition, a hospital may not delay screening or treatment to any individual while it verifies the information provided.

Hospitals may follow reasonable registration processes for individuals presenting with an EMC. Reasonable registration processes may include asking whether an individual is insured and, if so, what the insurance is, as long as this inquiry do not delay screening, treatment or unduly discourage individuals from remaining for further evaluation. The registration process permitted in the dedicated ED typically consists of collecting demographic information, insurance information, whom to contact in an emergency and other relevant information.

If a managed care member comes to a hospital that offers emergency services, the hospital must provide the services required under the EMTALA statute without regard for the individual's insurance status or any prior authorization requirement of such insurance.

This requirement applies equally to both the referring and the receiving (recipient) hospital. Therefore, it may be a violation if the receiving hospital delays acceptance of the transfer of an individual with an unstabilized EMC pending receipt or verification of financial information. It would not be a violation if the receiving hospital delayed acceptance of the transfer of an individual with a stabilized EMC pending receipt or verification of financial information because EMTALA protections no longer apply once a patient is stabilized.

If a delay in screening was due to an unusual internal crisis whereby it was simply not within the capability of the hospital to provide an appropriate screening examination at the time the individual came to the hospital (e.g., mass casualty occupying all the hospital's resources for a time period), surveyors are to interview hospital staff members to elicit the facts surrounding the circumstances to help determine if there was a violation of EMTALA.

**(5) Refusal to Consent to Transfer.**

**A hospital meets the requirements of paragraph (d)(1)(ii) of this section with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with paragraph (e) of this section and informs the individual (or a person acting on his or her behalf) of the risks and benefits to the individual of the transfer, but the individual (or a person acting on the individual's behalf) does not consent to the transfer. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of a person acting on his or her behalf). The written document must indicate the person has been informed of the risks and benefits of the transfer and state the reasons for the individual's refusal. The medical record must contain a description of the proposed transfer that was refused by or on behalf of the individual.**

**Interpretive Guidelines: §489.24 (d)(5)**

For individuals who refuse to consent to a transfer, the hospital staff must inform the individual of the risks and benefits and document the refusal and, if possible, place a signed informed consent to refusal of the transfer in the individual's medical record.

If an individual or the individual's representative refuses to be transferred and also refuses to sign a statement to that effect, the hospital may document such refusals as they see fit.

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**Tag A-2409/C-2409**

**(Rev. 46, Issued: 05-29-09, Effective/Implementation: 05-29-09)**

**§489.24(e) Restricting Transfer Until the Individual Is Stabilized**

**(1) General. If an individual at a hospital has an emergency medical condition that has not been stabilized (as defined in paragraph (b) of this section), the hospital may not transfer the individual unless—**

- (i) The transfer is an appropriate transfer (within the meaning of paragraph (e)(2) of this section); and**
- (ii) (A) The individual (or a legally responsible person acting on the individual's behalf) requests the transfer, after being informed of the hospital's obligations under this section and of the risk of transfer. The request must be in writing and indicate the reasons for the request as well as indicate that he or she is aware of the risks and benefits of the transfer;**



- (B) A physician (within the meaning of Section 1861(r)(1) of the Act) has signed a certification that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual or, in the case of a woman in labor, to the woman or the unborn child, from being transferred. The certification must contain a summary of the risks and benefits upon which it is based; or**
- (C) If a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as determined by the hospital in its bylaws or rules and regulations) has signed a certification described in paragraph (e)(1)(ii)(B) of this section after a physician (as defined in Section 1861(r)(1) of the Act) in consultation with the qualified medical person, agrees with the certification and subsequently countersigns the certification. The certification must contain a summary of the risks and benefits upon which it is based.**

**(2) A transfer to another medical facility will be appropriate only in those cases in which-**

- (i) The transferring hospital provides medical treatment within its capacity that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;**
- (ii) The receiving facility--**
  - (A) Has available space and qualified personnel for the treatment of the individual; and**
  - (B) Has agreed to accept transfer of the individual and to provide appropriate medical treatment;**
- (iii) The transferring hospital sends to the receiving facility all medical records (or copies thereof) related to the emergency condition which the individual has presented that are available at the time of the transfer, including available history, records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, results of diagnostic studies or telephone reports of the studies, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) required under paragraph (e)(1)(ii) of this section, and the name and address of any on-call physician (described in paragraph (g) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment. Other records (e.g., test results not yet**

**available or historical records not readily available from the hospital's files) must be sent as soon as practicable after transfer; and**

- (iv) The transfer is effected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer.**

**Interpretive Guidelines: §489.24(e)**

**The EMTALA regulations at 42 CFR 489.24(b) define “transfer” as “...the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (i) has been declared dead, or (ii) leaves the facility without the permission of any such person.”**

**The requirements in 42 CFR 489.24(e) apply to transfers to another hospital.**

**Transfer of Individuals with Unstabilized EMCs**

In the case of individuals found to have an EMC a hospital is required under EMTALA rules at 42 CFR 489.24(d) to provide stabilizing treatment within the capabilities of the staff and facilities available in the hospital, or to provide a transfer to another hospital as required by 42 CFR 489.24(e). Transfer of the individual to another hospital may be reasonable and permissible, but the regulations establish a number of requirements that each transfer must meet in order to comply with EMTALA. If an individual's EMC has not been stabilized, prior to transferring the individual to another hospital, the sending hospital is required under EMTALA to pursue a transfer **because either:**

- the individual requests the transfer; **or**
- the expected benefits of the transfer outweigh the increased risks of the transfer.

In either case, the transfer must also always meet the four requirements of an “appropriate” transfer.

If an individual is moved to a diagnostic facility located at another hospital for diagnostic procedures not available at the transferring hospital, and the hospitals arrange to return the individual to the transferring hospital, the transfer requirements must still be met by the sending hospital. The recipient hospital is not obligated to meet the EMTALA transfer requirements when implementing an appropriate transfer back to the transferring hospital. However, it is reasonable to expect the recipient hospital with the diagnostic capability to communicate (e.g., telephonic report or documentation within the medical record) with the transferring hospital its findings of the medical condition and a status report of the individual during and after the procedure.

The transfer requirements apply only to individuals who have been determined to have an EMC that has not been stabilized. The hospital has no further EMTALA obligation to an individual who has been determined not to have an EMC or whose EMC has been stabilized, or who has been admitted as an inpatient (See discussion related to the requirements of 42 CFR 489.24(d), concerning stabilizing treatment.) However, the hospital has other obligations to the individual under the Hospital Conditions of Participation.

These transfer requirements do not apply to an individual who is moved to another part of the hospital, because technically the patient has not been transferred. This is also the case when an individual who presents to an off-campus dedicated emergency department is found to have an EMC and is moved to the hospital's main campus for stabilizing treatment that cannot be provided at the off-campus site.

### **Transfer at the Request of the Individual**

A transfer may be made at the request of the individual with an EMC or of a person legally responsible for that individual. The hospital must assure that the individual or legally responsible person is first informed of the hospital's obligations under EMTALA, e.g., its obligation to provide stabilizing treatment within its capability and capacity, regardless of the individual's ability to pay. The hospital must also assure that the individual has been advised of the medical risks associated with transfer. After the hospital has communicated this information, the individual's request for a transfer must be in writing. The request must include the reason(s) why the transfer is being requested and a statement that the individual is aware of the risks and benefits associated with the transfer. The individual or individual's representative must sign the written request.

### **Transfer with a Physician Certification**

Alternatively, a transfer may be made when a physician certifies that the expected benefits of the transfer outweigh the risks. Specifically, a physician must certify that the medical benefits to the individual with the EMC that could reasonably be expected from provision of appropriate treatment at another hospital outweigh the increased risks that result from being transferred. In the case of a pregnant woman in labor, the physician must certify that the expected benefits outweigh the risk to both the pregnant woman and the unborn child. Under certain circumstances qualified medical personnel other than a physician may sign the certification. A qualified medical person (QMP) may sign the certification of benefits versus risks of a transfer only after consultation with a physician who agrees with the transfer. The physician must subsequently countersign the certification. The physician's countersignature must be obtained within the established timeframe according to hospital policies and procedures. Hospital by-laws or rules or regulations must specify the criteria and process for granting medical staff privileges to QMPs, and, in accordance with the hospital or CAH Conditions of Participation, each individual QMP must be appropriately privileged.

The date and time of the physician (or the QMP) certification should closely match the date and time of the transfer.

Section 1861(r)(i) of the Act defines **physicians** as:

A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action. (This provision is not to be construed to limit the authority of a doctor of medicine or osteopathy to delegate tasks to other qualified health care personnel to the extent recognized under State law or a State's regulatory mechanism).

The regulation at §489.24 (e)(1) requires an express written certification. Physician certification cannot simply be implied from the findings in the medical record and the fact that the patient was transferred.

The certification must state the reason(s) for transfer. The narrative rationale need not be a lengthy discussion of the individual's medical condition reiterating facts already contained in the medical record, but it should give a complete picture of the benefits to be expected from appropriate care at the receiving (recipient) facility and the risks associated with the transfer, including the time away from an acute care setting necessary to effect the transfer. The risks and benefits certification should be specific to the condition of the patient upon transfer.

This rationale may be included on the certification form or in the medical record. In cases where the individual's medical record does not include a certification, the hospital may be given the opportunity to retrieve the certification. Certifications may not be backdated.

### **Women in Labor**

- Regardless of practices within a State, a woman in labor may be transferred only if she or her representative requests the transfer or if a physician or other qualified medical personnel signs a certification that the benefits outweigh the risks. If the hospital does not provide obstetrical services, the benefits of a transfer may outweigh the risks. A hospital cannot cite State law or practice as the basis for transfer.
- Hospitals that are not capable of handling high-risk deliveries or high-risk infants often have written transfer agreements with facilities capable of handling high-risk cases. The hospital must still meet the screening, treatment, and transfer requirements.

## **Four Requirements for an Appropriate Transfer**

- 1. §489.24 (e)(2)(i) - The transferring hospital provides medical treatment within its capacity that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;**

Before implementing a transfer of an individual with an unstablized EMC, a hospital is required to provide stabilizing treatment within its capability and capacity. See discussion of stabilizing treatment, 42 CFR 489.24(d). This includes treatment to minimize the transfer risk to the health of the individual and, in the case of a pregnant woman in labor, the health of the unborn child.

If Hospital A participates in a community call plan with Hospital B and an individual with an EMC requires the services of an on-call specialist who, pursuant to the community call plan, is on-call at Hospital B to respond to the specialty needs of individuals at Hospital A, then generally a transfer of the individual to Hospital B is warranted. However, Hospital A is still required to provide treatment within its on-site capability and capacity to minimize the risks of transfer, and all other transfer requirements must also be met, notwithstanding the participation in the community call plan.

- 2. §489.24(e)(2)(ii) - The receiving facility--**

- (A) Has available space and qualified personnel for the treatment of the individual; and**
- (B) Has agreed to accept transfer of the individual and to provide appropriate medical treatment;**

The transferring hospital must obtain permission from the receiving (recipient) hospital to transfer an individual. The transferring hospital should document its communication with the receiving (recipient) hospital, including the date and time of the transfer request and the name and title of the person accepting the transfer.

3. **§489.24 (e)(2)(iii) - The transferring hospital sends to the receiving facility all medical records (or copies thereof) related to the emergency condition which the individual has presented that are available at the time of the transfer, including available history, records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, results of diagnostic studies or telephone reports of the studies, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) required under paragraph (e)(1)(ii) of this section, and the name and address of any on-call physician (described in paragraph (g) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment. Other records (e.g., test results not yet available or historical records not readily available from the hospital's files) must be sent as soon as practicable after transfer;**

Necessary medical records must accompany individuals being transferred to another hospital. If a transfer is in an individual's best interest, it should not be delayed until records are retrieved or test results come back from the laboratory. Whatever medical records are available at the time the individual is transferred should be sent to the receiving (recipient) hospital with the patient. Test results that become available after the individual is transferred should be telephoned to the receiving (recipient) hospital, and then mailed or sent via electronic transmission consistent with HIPAA provisions on the transmission of electronic data.

4. **§489.24 (e)(2)(iv) - The transfer is effected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer.**

Emergency medical technicians may not always be "qualified personnel" for purposes of transferring an individual under these regulations. Depending on the individual's condition, there may be situations in which a physician's presence or some other specialist's presence might be necessary. The physician at the sending hospital (not at the receiving hospital) has the responsibility to determine the appropriate mode, equipment, and attendants for transfer.

While the sending hospital is ultimately responsible for ensuring that the transfer is affected appropriately, the hospital may meet its obligations as it sees fit. These regulations do not require that a hospital operate an emergency medical transportation service.

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**Tag A-2410/C-2410**

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**§489.24(e)(3)**

**(3) A participating hospital may not penalize or take adverse action against a physician or a qualified medical person described in paragraph (e)(1)(ii)(C) of this section because the physician or qualified medical person refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized, or against any hospital employee because the employee reports a violation of a requirement of this section.**

**Interpretive Guidelines: §489.24 (e)(3)**

A “participating hospital” means a hospital that has entered into a provider agreement under §1866 of the Act.

Hospital employees reporting alleged EMTALA violations are also protected by this regulation.

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**Tag A-2411/C-2411**

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**§489.24(f) Recipient Hospital Responsibilities**

**A participating hospital that has specialized capabilities or facilities (including, but not limited to, facilities such as burn units, shock-trauma units, neonatal intensive care units, or, with respect to rural areas, regional referral centers (which, for purposes of this subpart, mean hospitals meeting the requirements of referral centers found at §412.96 of this chapter)) may not refuse to accept from a referring hospital within the boundaries of the United States an appropriate transfer of an individual who requires such specialized capabilities or facilities if the receiving hospital has the capacity to treat the individual.**

- (1) The provisions of this paragraph (f) apply to any participating hospital with specialized capabilities, regardless of whether the hospital has a dedicated emergency department.**
- (2) The provisions of this paragraph (f) do not apply to an individual who has been admitted to a referring hospital under the provisions of paragraph (d)(2)(i) of this section.**

**Interpretive Guidelines: §489.24(f)**

A Medicare-participating hospital that has specialized capabilities or facilities may not refuse to accept an appropriate transfer from another hospital of an individual with an unstabilized emergency medical condition who is protected under EMTALA and requires such specialized capabilities or facilities. This assumes that, in addition to its specialized capabilities, the recipient hospital has the capacity to treat the individual, and that the transferring, i.e. referring, hospital lacks that capability or capacity. Hospitals with specialized capabilities or facilities may include, but are not limited to, hospitals with burn units, shock trauma units, neonatal intensive care units or hospitals that are regional referral centers that serve rural areas as defined by the requirements at 42 CFR 412.96.

This requirement to accept an appropriate transfer applies to any Medicare-participating hospital with specialized capabilities, regardless of whether the hospital has a dedicated emergency department. In other words, while some obligations under EMTALA apply only to hospitals that have a dedicated emergency department, e.g., requirements related to providing a medical screening examination, the EMTALA recipient hospital obligation can also apply to hospitals that do not have a dedicated emergency department. For example, if an individual is found to have an emergency medical condition that requires specialized psychiatric capabilities, a psychiatric hospital that participates in Medicare and has capacity is obligated to accept an appropriate transfer of that individual. It does not matter if the psychiatric hospital does not have a dedicated emergency department.

The regulation states that a recipient hospital's EMTALA obligations do not extend to individuals who are inpatients of another hospital. Thus, a hospital may not be cited for violating EMTALA if it refuses to accept the transfer of an inpatient from the referring hospital.

Section 489.24(b) defines inpatient: "Inpatient means an individual who is admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services as described in §409.10(a) of this chapter with the expectation that he or she will remain at least overnight and occupy a bed even though the situation later develops that the individual can be discharged or transferred to another hospital and does not actually use a hospital bed overnight."

Individuals who are placed in observation status are not inpatients, even if they occupy a bed overnight. Therefore, placement in an observation status of an individual who came to the hospital's DED does not terminate the EMTALA obligations of that hospital or a recipient hospital toward the individual.

There is no EMTALA obligation for a Medicare-participating hospital with specialized capabilities to accept transfers from hospitals located outside the boundaries of the United States. In accordance with Section 210(i) of the Social Security Act, the term "United States," when used in a geographical sense, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. Hospitals that request transfers must recognize that the appropriate transfer of individuals with unstabilized emergency medical conditions that require specialized services should



not routinely be made over great distances, bypassing closer hospitals with the needed capability and capacity.

A hospital with specialized capabilities or facilities that has the necessary capacity to treat an individual with an emergency medical condition may not condition or attempt to condition its acceptance of an appropriate transfer of an individual protected under EMTALA on the use of a particular mode of transport or transport service. It is the treating physician at the transferring hospital who decides how the individual is transported to the recipient hospital and what transport service will be used, since this physician has assessed the individual personally. The transferring hospital is required to arrange transport that minimizes the risk to the individual who is being transferred, in accordance with the requirements of §489.24(e)(2)(B)(iv).

A hospital with specialized capabilities that delays the treatment of an individual with an emergency medical condition who arrives as a transfer from another facility could be in violation of EMTALA, depending on the circumstances of that delay. For instance, if there is evidence that the recipient hospital unreasonably delayed the treatment of certain individuals and expedited the treatment of other individuals, based on their ability to pay for the services or some other form of discrimination, then the recipient hospital may be in violation of EMTALA. Hospitals that deliberately delay moving an individual from an EMS stretcher do not thereby delay the point in time at which their EMTALA obligation begins. Furthermore, such a practice of “parking” individuals arriving via EMS, refusing to release EMS personnel or equipment, can potentially jeopardize the health and safety of the transferred individual and other individuals in the community who may need EMS services at that time. On the other hand, this does not mean that a hospital will necessarily have violated EMTALA and/or the hospital CoPs if it does not, in every instance, immediately assume from the EMS provider all responsibility for the individual, regardless of any other circumstances in the hospital.

Lateral transfers, that is, transfers between facilities of comparable resources and capabilities, are not required by §489.24(f), because the benefits of such a transfer would not be likely to outweigh the risks of the transfer, except when the transferring hospital has a serious capacity problem, a mechanical failure of equipment, or similar situations, such as loss of power or significant flooding.

Assessment of whether the transferring hospital with the requisite capabilities lacked the capacity to provide stabilizing treatment, or of whether the recipient hospital lacked the capacity to accept an appropriate transfer requires a review of the hospital’s general practices in adjusting its capacity. If a hospital generally has a record of accommodating additional patients by various means, such as moving patients from one unit to another, calling in additional staff, and temporarily borrowing additional equipment from other facilities, then that hospital would be expected under EMTALA to take reasonable steps to respond to the treatment needs of an individual requiring stabilizing treatment for an emergency medical condition. The determination of a hospital’s capacity would depend on the case-specific circumstances and the hospital’s previous implementation of capacity management actions.

The criteria for classifying hospitals as rural regional referral centers are defined in 42 CFR 412.96. A designated rural regional referral center is obligated to accept appropriate transfers of individuals who require the hospital's specialized capabilities if the hospital has the capacity to treat the individual.