

# Emergency Medical Treatment and Active Labor Act (“EMTALA”)



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# Written Materials

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- EMTALA Regulations, 42 CFR 489.20(r), 489.24
- EMTALA Interpretive Guidelines
- Sample EMTALA Policy
- Stanger, *Avoiding EMTALA Penalties*
- Stanger, *The On-Call Physician's Liability for Failing to Respond to Emergency Room*



## Most Important Rule

*When in doubt...*

- **Do what you must to keep staff and patients safe.**
- **Document the circumstances, e.g., what you did and why.**
- You'll probably be okay if you do this.
- We'd rather defend against a regulatory violation or disruptive patient case than face serious injury to staff or others.

# EMTALA Penalties

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- **Civil penalties**
  - **Physicians: \$103,000\* per violation.**
  - **Hospitals:**
    - **Less than 100 beds: \$51,470\* per violation**
    - **100+ beds: \$103,000\* per violation**
- **Hospitals may be sued for damages.**
  - **Individuals who suffer personal harm.**
  - **Medical facilities that suffer financial loss.**
- **Termination of Medicare provider agreement and exclusion from Medicare and Medicaid.**

(42 USC 1395dd(d); 42 CFR 1003.103(e))

# EMTALA:

## Basic Responsibilities

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- Participating hospital with a dedicated emergency dept must provide:
  - Emergency medical screening exam,
  - Stabilizing treatment for emergency conditions, and/or
  - Appropriate transfer of unstabilized person.
- Participating hospital with specialized capabilities must accept transfer of unstabilized person.
  - Unless on diversionary status.
- Cannot delay exam or treatment to inquire about payment.

(42 USC 1395dd; 42 CFR 489.20(r) and 489.24)

# EMTALA

## If person comes to hospital:

1. Main campus + 250 yards.
2. Off-campus facility with a dedicated emergency dept.
3. In hospital-owned ambulance.
  - *Beware diverting inbound ambulance.*
  - *Beware encouraging people to leave.*

## Medical screening exam

1. By qualified medical person
2. Within hospital capability
3. Sufficient to determine if pt has emergency medical condition, i.e. (a) absence of care seriously jeopardizes health, or (b) suicidal, homicidal, or danger to self or others

No emergency medical condition or admitted as inpatient

Yes emergency medical condition

EMTALA ends;  
May transfer or discharge patient;  
beware malpractice, COPs, Joint Comm'n

## Stabilizing treatment

1. Transfer: protected from harm to self or others.
2. Discharge: no longer a threat to self or others

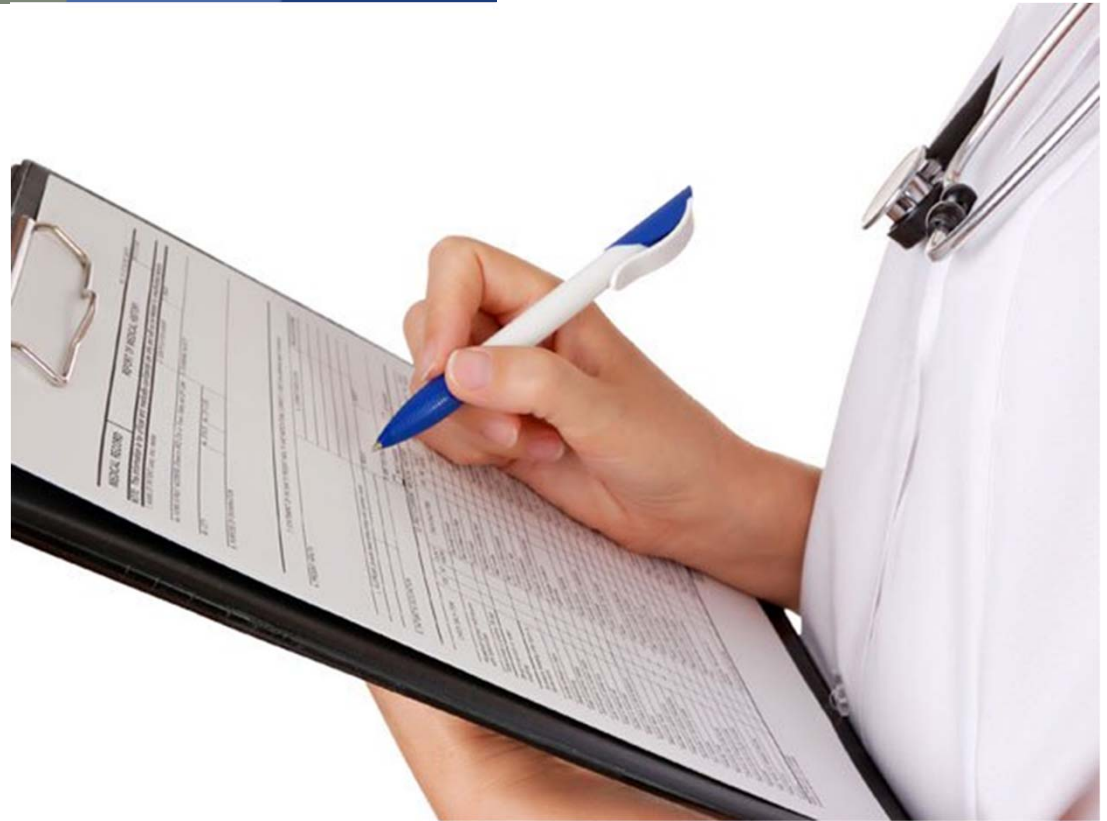
## Appropriate transfer

1. Stabilizing treatment
2. Receiving facility accepts transfer
3. Use appropriate means to transfer
4. Send records

# Document, Document, Document

*If it's not in  
the chart,  
it didn't happen.*

- Appropriate exam.
- No emergency condition.
- Stable condition.
- Patient refused care or requested transfer.
- Certification that benefits of transfer > risks
- Appropriate transfer
- Patient refused care or left AMA





# Appropriate Transfer

- If patient is not stabilized, hospital may not transfer or discharge patient unless:
  - Either one of the following—
    - Patient or representative requests transfer, or
    - Physician certifies that benefits outweigh risks; and
  - Transfer is “appropriate” under regulations.
- Transfer = Movement outside hospital at direction of hospital personnel, including discharge.
  - Not if person leaves the hospital without permission.
  - Not movement within or between the same hospital.

(42 CFR 489.24(b), (d)(e); Interpretive Guidelines 489.24(a))

# Appropriate Transfer

**Transfers of unstable patients must be “appropriate”, i.e.,**

- **Transferring hospital provides treatment within its capability to minimize risk of harm to patient.**
- **Transferring hospital contacts receiving facility and facility agrees to accept the transfer.**
  - **Identify person with authority to accept for receiving facility.**
- **Transferring hospital sends:**
  - **Relevant records available at the time.**
  - **Name on-call physician who failed to respond, if any.**
  - **Additional records as soon as practicable.**
- **Transfer effected through qualified personnel with proper equipment, including life support measures.**

**(42 CFR 489.24(e)(2))**

# Recipient Hospital Responsibilities

- Participating hospital with “specialized capabilities” must accept transfer if it has capacity, e.g.,
  - Specialized equipment or personnel (e.g., mental health).
  - Special circumstances at transferring facility (“serious capacity problem”, mechanical failure, no beds, no call coverage for specialty, etc.).
- May refuse transfers if:
  - Transferring hospital has similar capabilities, but be careful.
  - Transferring hospital admitted the patient as inpatient.
  - Transfer from outside the United States.

(42 CFR 489.24(f))

# Do Not Delay or Discourage Exam or Treatment

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- **Cannot delay exam or treatment to inquire about payment.**
- **Cannot seek preauthorization from insurer until after you have conducted exam and initiated stabilizing treatment.**

(42 CFR 489.24(d)(4); Interpretive Guidelines 489.24(a), (d)(4))

- **Do not suggest to patient that:**
  - **They should leave.**
  - **They could obtain services elsewhere at less cost.**
  - **Insurance may not cover treatment.**

(Interpretive Guidelines 489.24(a), (d)(4))

# Do Not Delay or Discourage Exam or Treatment

- So long as it does not delay or discourage exam or treatment, hospital may
  - Follow reasonable registration process (e.g., obtain demographics, obtain insurance information or card, identify emergency contact, etc.).
    - Not condition treatment on payment.
  - Contact primary physician or health plan to obtain history or identify needs.
    - Not seek preauthorization.
  - Have knowledgeable person answer questions about payment.

(Interpretive Guidelines 489.24(a))

# Patients Who Refuse Exam, Treatment or Transfer

- **Hospital must—**
  - Offer exam, treatment or transfer.
  - Document the exam, treatment or transfer that was refused.
  - Document that risks and benefits were explained to patient.
  - Document basis for refusal of transfer.
  - Take reasonable steps to secure written informed refusal.
  - If patient refuses to sign, document refusal.

(42 CFR 489.24(d)(3), (5))

# Transfer to Hospital with Specialized Capabilities



# Recipient Hospital Responsibilities

- Participating hospital with “specialized capabilities” must accept transfer if it has capacity, e.g.,
  - Specialized equipment or personnel (mental health, NICU, burn unit, trauma, regional referral center, etc.).
  - Special circumstances at transferring facility (“serious capacity problem”, mechanical failure, no beds, no call coverage for specialty, etc.).
- May refuse transfers if:
  - Transferring hospital has similar capabilities, but be careful.
  - Transferring hospital admitted the patient as inpatient.
  - Transfer from outside the United States.

(42 CFR 489.24(f))



# Reporting Improper Transfers

- Receiving hospital must report to CMS or state surveyors if it has reason to believe that it has received improper transfer of patient.
  - Other hospital “dumped” the patient.
  - Other hospital refused care.
  - Other hospital sent unstabilized patient without an appropriate transfer.

(42 CFR 489.20(m))

- Liable for EMTALA penalties if fail to timely report.
- CMS Interpretive Guidelines require report within 72 hours.

(Interpretive Guideline 489.20(m))

- *Investigate facts before reporting!*

# On-Call Responsibilities



# On-Call Physicians

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- **Hospital should provide call coverage for services offered at hospital.**
  - But hospital has discretion in managing call coverage.
- **If on-call physician called:**
  - Must respond within reasonable time.
  - Must report to the hospital if requested.
- **If on-call physician fails to respond:**
  - Hospital must send name of physician to receiving facility.
  - Physician may be liable for \$103,000 penalties



*Remember...*

- **Do what you must to keep staff and patients safe.**
- **Document the circumstances, e.g., what you did and why.**
- You'll probably be okay if you do this.
- We'd rather defend against a regulatory violation or disruptive patient case than face serious injury to staff or others.

# Questions

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