


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



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EMTALA




You should know EMTALA if:

- You provide services at or for a hospital.
- Your providers participate in call coverage or provide emergency services at a hospital.
- You might go to the emergency department.

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Idaho Emergency Treatment Act

- **Hospital** cannot refuse emergency or first aid services and care “by reason of race, creed, national origin or financial ability to pay.”
(IC 39-1391b)
- No penalty listed.




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Emergency Treatment and Active Labor Act of 1986 (“EMTALA”)

- Statute
 - 42 USC 1395dd
- Regulations
 - 42 CFR 489.20(m), (q), (r)
 - 42 CFR 489.24
 - 42 CFR 1003.103(e)
 - 42 CFR 1003.106(d)
- Interpretive Guidelines
 - Medicare State Operations Manual (“SOM”) Appendix V (rev’d 6/10), at www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_v_emerg.pdf


} Part of hospital Medicare Conditions of Participation

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EMTALA Applies To

- Hospitals that participate in Medicare
 - Hospitals with dedicated emergency dept (“DED”), i.e.,
 - Licensed as an emergency room or department;
 - Held out to the public as place that provides emergency care without appointment, e.g., provider-based urgent care center or labor and delivery department; or
 - During prior calendar year, provided at least 1/3 of outpatient visits for emergency conditions on urgent basis without prior appointment.
 - Hospitals with specialized capabilities, e.g., specialty hospitals.
- Physicians responding to potential emergency medical conditions, including on-call services.

(42 USC 1395dd; 42 CFR 489.24(b))

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EMTALA Requirements

- 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.
- Cannot delay exam or treatment to inquire about payment.
- Must post required signage.
- Must maintain required documentation.
 - On-call list.
 - ED log of those who come to hospital.


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

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EMTALA Penalties

- Civil penalties
 - Physicians: \$50,000 per violation.
 - Hospitals:
 - Less than 100 beds: \$25,000 per violation
 - 100+ beds: \$50,000 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))

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EMTALA Triggers




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EMTALA Triggers

- For hospitals with a dedicated emergency dept (“DED”), EMTALA is triggered if:
 - Person comes to the hospital,
 - Request is made for emergency care, and
 - Person is not already a patient at the hospital.
- For hospitals without a DED (e.g., specialty hospital), EMTALA is triggered if:
 - Hospital participates in Medicare,
 - Hospital has specialized capabilities, and
 - Hospital receives request for transfer from another facility.

(42 CFR 489.24)


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On Hospital Property

- “Comes to the hospital” =
 - Main campus of hospital, including parking lot, sidewalk, and driveway.
 - Area within 250 yards of hospital that is owned by the hospital, e.g., provider-based department.
 - Off-campus facility with a dedicated emergency dept (“DED”).
 - In hospital-owned ambulance.

(42 CFR 489.249(b); Interpretive Guidelines 489.24(a))


- Cannot divert inbound ambulance unless you are on diversionary status. (*Arrington v. Wong* (9th Cir. 2001))
 - May discuss best interests of patient.

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Ambulances

- If air or ground ambulance is owned and operated by your hospital:
 - EMTALA applies to your hospital if patient is in your ambulance unless ambulance is operated:
 - Under community-wide EMS protocol that directs it to a different hospital; or
 - At direction of physician from a different hospital.
- If ambulance is not owned and operated by your hospital:
 - EMTALA applies to your hospital if ambulance is on your hospital property.
 - May divert inbound ambulance if you are on diversionary status.


(42 CFR 489.24(b))

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Diversion

- Cannot divert inbound ambulance unless you are on diversionary status. (*Arrington v. Wong* (9th Cir. 2001))
- Diversionary status = lack staff or facilities to accept additional emergency patients.
- Capacity depends on—
 - Staff, equipment, and supplies
 - Number and availability of beds
 - Past practices in accommodating additional patients in excess of occupancy limits (e.g., moving patients to other units, calling in additional staff, borrowing equipment, etc.)


(42 CFR 489.24(b))

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Diversion

Practical rules regarding diversion:


- May divert persons who are not on hospital property and who are not in an ambulance.
- If person is in ambulance, may discuss treatment options or alternative hospitals with ambulance crew, but beware diversion.
- Do not divert inbound ambulance unless your hospital is on diversionary status.
 - Document diversionary status, including time and bases for diversion.
- Must provide care if person comes to hospital.

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Helipads

- If patient is brought to your hospital for exam or treatment prior to transport to another facility:
 - EMTALA applies to hospital.
 - Hospital must provide screening exam, stabilizing treatment, and/or appropriate transfer.
- If other facility already examined the person and your hospital's helipad is used merely for transport, EMTALA does not apply to your hospital unless:
 - Person's condition deteriorates while at your helipad, and
 - Request is made for exam or treatment by the person or others.

(Interpretive Guidelines 489.24(a))

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Request for Emergency Care

- EMTALA applies if a request is made for emergency care or reasonably prudent person would believe person requires emergency care.
- EMTALA does not apply to requests for clearly non-emergent care, e.g.,
 - Preventative care (e.g., immunization, flu shots, community outreach, etc.)
 - Requests to perform non-emergency test (e.g., blood pressure or x-ray).
 - Gather evidence (e.g., BAC test, sexual assault, etc.)
 - Prescheduled appointment by physician.

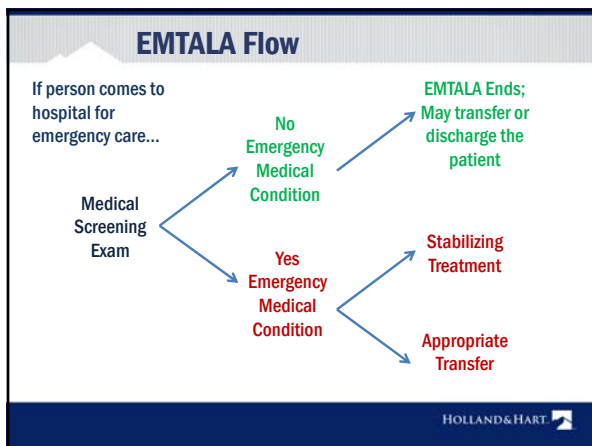
**Document non-emergent request.*
(Interpretive Guidelines 489.24(c))

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Inpatients or Outpatients

- EMTALA does not apply to “patients” of hospital.
 - Inpatients: EMTALA ends once the person is admitted as an inpatient in good faith, i.e., admitted for bed occupancy with expectation that person will remain overnight.
 - Outpatients: EMTALA does not apply if person has begun receiving outpatient services other than emergency care.
- EMTALA does not apply even if emergency arises after person’s admission or after outpatient services begin.
(42 CFR 489.24(a)-(b), (d)(2); Interpretive Guidelines 489.24(a), (d))

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Medical Screening Exam




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Medical Screening Exam

Appropriate medical screening exam =

- Performed by qualified medical personnel (“QMP”).
 - Identified in documents approved by governing body.
 - Competent to perform exam.
 - Privileged to perform exam.
- Applied in non-discriminatory manner.
 - Does not differ based on payment status, condition, race, national origin, disability, etc.
- Sufficient to allow QMP to determine, with reasonable clinical confidence, whether emergency condition exists.
 - Depends on presenting signs and symptoms, and hospital’s capabilities, including on-call physicians.


(Interpretive Guidelines 489.24(a), (e))

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Medical Screening Exam

- Must provide exam within capabilities of the hospital.
- Capabilities =
 - Physical space, equipment supplies and specialized services (e.g., surgery, psychiatry, obstetrics, ICU, pediatrics, trauma care, etc.);
 - Level of care that hospital personnel can provide within the training and scope of their professional licenses, including the on-call roster; and
 - Whatever the hospital customarily has done to accommodate patients.


(42 CFR 489.24(b); Interpretive Guidelines 489.24(d))

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Medical Screening Exam


- Screening exam is ongoing process, not isolated event.
 - Begins with triage but goes beyond triage.
 - Continues until stabilized, admitted or transferred.
- Should normally include–
 - Vital signs.
 - History.
 - Documented physical exam of involved area or system.
 - If needed, ancillary tests and specialists available through hospital, e.g., lab tests, diagnostic tests and procedures, CT scans or other imaging services, etc.
 - Continued monitoring.

(Interpretive Guidelines 489.24(a))


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Medical Screening Exam

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

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Emergency Medical Condition

- A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances, and/or substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in
 - Placing the individual's health in serious jeopardy;
 - Serious impairment to bodily functions; or
 - Serious dysfunction of any bodily organ or part.


(42 CFR 489.24(b))

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**Emergency Medical Condition:
Pregnancy**

- In the case of pregnant woman having contractions, either—
 - Inadequate time to effect safe transfer to another hospital before delivery; or
 - Transfer may pose a threat to health or safety of woman or unborn child.
- Labor = process of childbirth beginning with latent or early labor and continuing through delivery of placenta.
- Woman experiencing contractions is presumed to be in labor unless a QMP acting within scope of practice certifies false labor after reasonable period of observation.


(42 CFR 489.24(b))

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**Emergency Medical Condition:
Psychiatric Condition**

- Individual is expressing suicidal or homicidal thoughts or gestures or determined to be dangerous to self or others.


(Interpretive Guidelines 489.24(d))

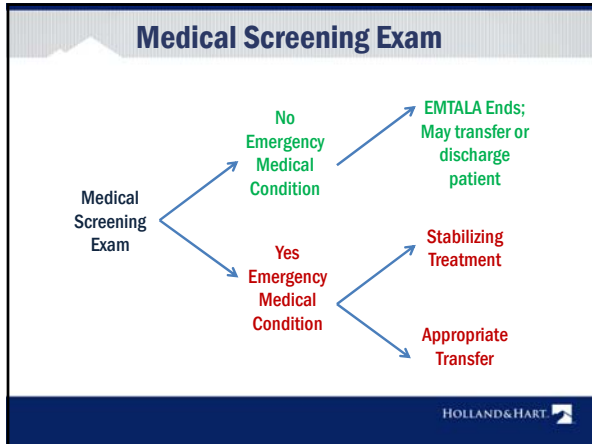
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**Medical Screening Exam:
Non-Emergent Condition**

- Hospital need only perform screening exam necessary to rule out emergency medical condition based on presenting symptoms.
- If nature of the request makes it clear that medical condition is not of an emergency nature, hospital is only required to perform such screening as would be appropriate to determine that individual does not have emergency medical condition.
- In case of obvious non-emergency situation, person's statement that they are not seeking emergency care, together with brief questioning by QMP, would be sufficient to rule out emergency medical condition.

(42 CFR 489.24(c))
* *Be sure to document!*

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Stabilizing Treatment


- If medical screening exam reveals an emergency medical condition, hospital must provide either:
 - Stabilizing treatment within its capabilities.
 - Such care necessary to assure, within reasonable medical probability, that no material deterioration of condition is likely to result from or occur during transfer from facility, or
 - For pregnant woman, delivery of child and placenta.
 - An appropriate transfer to another facility.
- EMTALA ends once patient is stabilized or admitted.

(42 CFR 489.24(d))

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Stable for Transfer


- Under regulation, stabilized =
 - No material deterioration of condition is likely, within a reasonable medical probability, to result from transfer, or
 - For pregnant woman, delivery of child and placenta.(42 CFR 489.24(b))
- Under Interpretive Guidelines, stabilized =
 - Emergency medical condition has resolved, even though underlying medical condition may persist.
 - For psychiatric conditions, person is protected and prevented from harming themselves or others.(Interpretive Guidelines 489.24(d))

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Stable for Discharge

- Within reasonable clinical confidence, patient has reached a point where their continued care (including diagnostics or treatment) could be reasonably performed as an outpatient or later as an inpatient provided the patient is given a plan for appropriate follow-up care as part of discharge instructions.
- For psychiatric conditions, that the patient is no longer a threat to themselves or others.

(Interpretive Guidelines 489.24(d))

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**Stable for Transfer or Discharge:
Pregnancy**


- For pregnant woman in labor, “stabilized” = delivery of the child and the placenta.
- If a woman is having contractions:
 - Hospital must deliver the baby and placenta, or
 - Hospital must perform appropriate transfer, including discharge back to home.
- False labor must be certified by QMP after reasonable period of observation.


(42 CFR 489.24(d))

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Stable for Transfer or Discharge

**DOCUMENT,
DOCUMENT,
DOCUMENT!**




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Stabilizing Treatment

Stabilizing Treatment

- Patient is stabilized or admitted
 - EMTALA Ends, but may have malpractice duties
- Patient is not stabilized
 - Continue Stabilizing Treatment
 - Appropriate Transfer

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Appropriate Transfers




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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))

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**Transfers:
Patient Request**

- Patient or their legally authorized representative may request transfer.
- Hospital must inform patient regarding:
 - EMTALA rights; and
 - Risks of transfer.
- Patient should complete written request for transfer that documents:
 - Reason for requested transfer, and
 - Patient is aware of risks and benefits of transfer.

(42 CFR 489.24(e)(iii))


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**Transfer:
Physician Certification**

Hospital may transfer patient if:

- Physician signs written certification:
 - Summarize the reason, risks and benefits of transfer;
 - State that, based on info available at time, the medical benefits outweigh risk; and
 - Sign the certification form.
 - Certification may not be backdated.
- If physician not present in emergency department,
 - QMP may consult with physician and sign the certification; and
 - Physician must countersign within time required by bylaws or policies.


(42 CFR 489.24(e); Interpretive Guidelines at 489.24(e))

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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))


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Appropriate Transfer

- Hospital is not required to maintain EMS to transfer patients.
- Beware sending patient by private car.
 - Document that method of transport is appropriate, or that you offered appropriate transportation.
 - Ensure patient is accompanied by appropriate family member, friend or other.
 - Give appropriate instructions, e.g., go directly to other facility.
 - Document patient’s refusal to accept ambulance transport.

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Patients Who Refuse Exam, Treatment, or Transfer



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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))

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Patients Refuse Care

- Hospital may not coerce persons into refusing care or leaving hospital by, e.g., informing them that they will have to pay for their care if they remain but that their care will be free or at lower cost if they transfer to another hospital.

(Interpretive Guideline 489.24(d)(3))

- Be careful in discussions with patient.
 - May honestly respond to queries.
 - Remind patient that law entitles them to certain care even if they cannot pay.

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Prompt Examination or Treatment



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Do Not Delay or Discourage Exam or Treatment

- 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))

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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))

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Transfer to Hospital with Specialized Capabilities




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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))


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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!*

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On-Call Responsibilities



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On-Call Responsibilities

- Hospital must maintain on-call list of medical staff members available to provide screening exam and stabilizing treatment.
 - Applies to all participating hospitals.

(42 CFR 489.20(r))

- Hospitals have flexibility in establishing call coverage.
 - Not required to have 24/7 coverage.
 - Not required to have coverage for all specialties.
- “CMS expects a hospital to strive to provide adequate specialty on-call coverage consistent with the services provided at the hospital.”
 - CMS will consider circumstances regarding call coverage.

(42 CFR 489.20(r); Interpretive Guideline 489.20(r))

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On-Call Responsibilities

Hospital must have written policies and procedures to:

- Respond if specialty or on-call physician is not available.
 - Implement proper transfers.
 - Transfer agreements.
 - Notice to EMS.
- Provide backup plan if hospital permits on-call physicians to:
 - Schedule elective surgery or other procedures while on call.
(CAHs: beware Medicare reimbursement)
 - Take simultaneous call coverage at different hospitals.

(42 CFR 489.24(j))

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On-Call Responsibilities

- Not all medical staff members are required to take call.
- Maintain on-call list by individual, not by group.
- Require physicians to respond within set time (e.g., 30 minutes).
- May use telemedicine.
- On-call physician should come to hospital, not have patient sent to his office.
- If polices permit, on-call physician may send midlevel, but on-call physician remains responsible.
- If treating physician determines that on-call physician should respond in person, on-call physician should do so.
- Beware informal call list.
(Interpretive Guidelines 489.20(r))

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Documentation

IT'S THE LAW

If you have a medical emergency or are in labor you have the right to receive, within the capabilities of this hospital's staff and facilities:

- an appropriate medical **SCREENING EXAMINATION**
- necessary **STABILIZING TREATMENT** (including treatment for an unborn child) and if necessary
- an appropriate **TRANSFER** to another facility even if
- YOU CANNOT PAY or
- DO NOT HAVE MEDICAL INSURANCE or
- YOU ARE NOT ENTITLED TO MEDICAID OR MEDICAID

This Hospital does participate in the Medicaid Program.

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EMTALA Sign

Hospitals with DED must post EMTALA sign:

- Sign must:
 - Advise patients of EMTALA rights.
 - State whether hospital participates in Medicaid.
 - Be written in clear and simple terms.
 - Be in languages understandable by population served by hospital.
- Post sign where it will likely be seen by:
 - Persons entering emergency department.
 - Persons waiting for exam and treatment.
 (entrance, admitting area, waiting room, treatment area)


(42 CFR 489.20(q); Interpretive Guidelines 489.20(q))

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Emergency Department Log

- Hospital must maintain central log on each individual who comes to DED seeking assistance, including:
 - Whether patient refused treatment.
 - Whether patient was refused treatment.
 - Whether patient was treated, stabilized, admitted, transferred or discharged.
- Hospital has flexibility in manner in which it maintains log.
- Central log may include records from other areas, e.g., pediatrics, labor & delivery, etc.


(42 CFR 489.20(f)(3); Interpretive Guidelines 489.20(f)(3))

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Records

- Hospitals must maintain records regarding individuals transferred to or from hospital for 5 years from date of transfer.
 - Must retain original or legally reproducible form.
 - May maintain hard copy, microfilm, fiche, disk, computer file, etc.

(42 CFR 489.20(f); Interpretive Guidelines 489.20(f))

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Avoiding Penalties



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Avoiding Penalties

- Do what is in the best interest of the patient.
- Document, document, document!
 - Appropriate medical screening exam, including:
 - Performed by QMP.
 - Addressed presenting symptoms.
 - Ongoing monitoring.
 - Whether patient had emergency medical condition.
 - Whether patient was stabilized.
 - Patient received appropriate transfer, including physician certification of risks and benefits.
 - Patient left AMA.

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Avoiding Penalties

- Maintain written EMTALA policies, forms and signs.
- Train and re-train staff regarding EMTALA compliance.
 - Document the training.
- Maintain on-call list.
- Ensure physicians respond to call.
- Ensure QMPs are identified and qualified.
 - Identified in document approved by board.
 - Privileged to provide screening exams.
- Maintain and periodically review ED log.
 - Update as appropriate.

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Avoiding Penalties

- Beware transfer by private car.
 - Document that we offered alternative transport.
 - Document circumstances of transfer.
- Beware inbound ambulances.
 - Generally cannot turn away unless on divert.
 - May discuss treatment alternatives, but document.
- Beware requests for transfer to your facility.
 - Require requests to come to authorized persons.
 - Confirm your own capacity.
 - Confirm specialized capabilities.

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Avoiding Penalties

- Immediately respond to suspected violations.
 - Gather and confirm facts, including documents and witness statements.
 - Supplement record as appropriate.
 - Impose sanctions if appropriate.
 - Provide additional training.
- No duty to self-report your own violations.
 - May want to self-report if another hospital will report.
 - Must report:
 - On-call physicians who failed to respond.
 - Receipt of improper transfer.

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Avoiding Penalties

- If government investigates:
 - Cooperate with investigation.
 - Gather and supplement with important facts.
 - Implement appropriate plan of correction.
 - Respond with your explanation of the facts.
 - If there was no EMTALA violation, explain why.
 - If there was EMTALA violation, explain why you should not be penalized, e.g.,
 - Appropriate policies in place.
 - Appropriate training.
 - Rogue employee.
 - Corrective action taken.

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Additional Resources



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www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA



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