



## **EMTALA QUICK REFERENCE GUIDE FOR ON-CALL PHYSICIANS**

*This EMTALA Quick Reference Guide is intended as an abbreviated summary of what is expected of on-call physicians. It is NOT intended to be an all encompassing or comprehensive discussion of EMTALA. For more extensive information regarding requirements and obligations for EMTALA compliance and to determine how a particular organization can be compliant, physicians and hospitals are urged to review the EMTALA statutes, relevant Centers for Medicare and Medicaid Services (CMS) EMTALA regulations, and obtain appropriate counsel from their own hospital and medical staff attorneys.*

### **What is the Emergency Medical Treatment and Labor Act (EMTALA)?**

EMTALA is the federal “anti-dumping law” enacted by Congress in 1986 to assure that patients who come to hospitals for treatment of an emergency medical condition are not turned away or transferred to another facility, based on their ability to pay. It applies to any individual who is not a patient who presents to a dedicated emergency department requesting or being deemed to need an examination or treatment for a medical condition, including active labor. It also applies when an individual who is not a patient presents on hospital property requesting or being deemed to need an examination or treatment for an emergency medical condition.

### **What are the responsibilities of hospitals and what treatment and services must be provided to be in compliance with EMTALA?**

- A physician or other qualified medical personnel must provide an appropriate medical screening examination to individuals who enter the “dedicated emergency department” for a medical condition or who are on hospital property and experience an emergency medical condition, as decided by a prudent layperson, to determine the presence or absence of an emergency medical condition.
- Stabilize the medical condition of the individual if an emergency medical condition is found, within the capabilities of the staff and facilities available at the hospital, prior to discharge or transfer.
  - Obstetric patients with contractions are considered unstable until delivery of baby and placenta.
- An unstable patient cannot be transferred unless the patient (or a person acting on his or her behalf) requests the transfer or the transferring physician certifies in writing that the medical benefits of the transfer outweigh the risks, and is in the best medical interest of the patient. In order to transfer, a hospital must:
  - Stabilize within the hospital’s capabilities to minimize the risk of the transfer.
  - Obtain the acceptance of the receiving hospital.
  - Send all pertinent medical records available at the time of the transfer to the receiving hospital.
  - Effect the transfer through qualified persons and transportation equipment (including life support measures)
- A receiving hospital, with specialized capabilities, must accept a patient transfer unless that acceptance would exceed its capability and capacity for providing care.
- Hospitals are responsible for ensuring that on-call physicians respond within a reasonable period of time.
- The hospital must provide the name and address of any on-call physician who refused to respond or failed to make a timely response without good cause, along with the transfer records, of any patient transferred as a result of that refusal or lack of timely response.

- Prior to screening and stabilization, the hospital emergency department may follow normal registration processes, as long as they ***do not delay care or discourage the patient from further treatment***, and prior authorization is not received before screening or commencing stabilizing treatment is allowed.
- Conspicuous signage must be posted in the emergency department stating the rights of individuals under EMTALA and whether the hospital participates in the Medicaid program; and also maintain a 24 hour/7-day (24/7) on-call schedule of physicians taking call for the emergency department.-

### **What is an on-call list?**

An on-call list is a roster of physicians providing the date and time when those physicians are scheduled to respond to the hospital to provide evaluation and/or treatment necessary to stabilize an individual with an emergency medical condition. The on-call list is to be comprised: (1) in a manner that best meets the needs of the patients who receive care under EMTALA; and (2) in accordance with the hospital's resources, which includes the availability of on-call physicians. CMS has clarified that it does not have a predetermined ratio to determine how many days a particular specialty must provide on-call coverage. CMS will consider all relevant factors, including the number of physicians on staff and the demand on these physicians, in determining EMTALA compliance.

- The on-call list is maintained by the hospital and medical staff and must be immediately updated to reflect any changes in physician staffing.
- Physicians whose names appear on the on-call list are responsible for finding a suitable replacement if they cannot be available for duty and for updating the on-call list with the replacement physician's name and other appropriate information.

Physicians will be permitted to be on call simultaneously for more than one hospital, and to schedule elective surgery or other medical procedures during on-call times. Hospitals must have policies and procedures to respond to situations when a particular specialty is not available.

### **Which medical staff documents define the responsibilities of on-call physicians?**

- The medical staff bylaws, rules and regulations, or policies and procedures should define the responsibility of on-call physicians to respond, examine and treat patients with emergency medical conditions.
- The medical staff and hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

### **What are the responsibilities of on-call physicians to be in compliance with EMTALA?**

- On-call physicians or other qualified medical personnel **MUST** respond to the hospital when requested to attend to patients in a timely manner and complete a medical screening examination or provide stabilizing care unless circumstances beyond the physician's control prevent a response.
- The transferring physician **MUST** discuss the case with the receiving hospital's authorized representative and obtain agreement to accept the patient in transfer. (All hospitals with specialized capabilities, including physician specialists, have a responsibility to accept a transfer when such transfer is necessary to stabilize an emergency medical condition.)
- On-call physicians, who may be on-call at another hospital simultaneously, **MUST NOT** request that a patient be transferred to a second hospital for the physician's convenience.

- On-call physicians who, as part of their routine responsibilities, are charged with the duty to accept patients transferred from other facilities, may not refuse any unstable transfer as long as their hospital has the capability and capacity to provide treatment.

**Can an emergency patient be sent to the office of an on-call physician for the medical screening exam and stabilization?**

No, not unless the on-call physician's office is located in a hospital-owned building which is contiguous or located in a hospital-owned building that is "on campus" and the service must be billed under the hospital's provider number.

A patient can be transferred to a physician's office IF the physicians' office has specialized equipment and capability that the transferring hospital does not have. The transferring physician must certify that the medical benefits of the transfer outweigh the risks and it is in the best medical interest of the patient. Under no circumstance should a patient be transferred for the convenience of the physician.

**What are the possible penalties or sanctions for EMTALA violations?**

Medicare-participating hospitals and physicians found to be in violation of EMTALA could be sanctioned as follows:

- Termination of the hospital and/or physician Medicare provider agreement.
- Imposition of civil monetary penalties against the hospital with 100 or more beds of \$50,000 per violation. The fine per violation for hospitals with less than 100 beds cannot exceed \$25,000.
- Civil monetary penalties for physicians can be up to \$50,000 per violation.
- On-call physicians responsible for examination, treatment, or transfer of an individual are subject to potential civil fines of up to \$50,000 per violation for failing to come to the hospital, and may be excluded from Medicare.
- "EMTALA provides a private right of action against a hospital for an EMTALA violation. There is no private right of action, however, against a physician for violating EMTALA. ...Private EMTALA actions are subject to a two-year statute of limitations."

**What if an on-call physician refuses or fails to show up or answer when called?**

The physician's name and address will be included in the medical record and he or she may be subject to sanctions.

## Glossary

**Dedicated emergency department:** The final regulation effective November 10, 2003, defines dedicated emergency department as any department or facility of the hospital, whether situated on or off the main hospital campus, that: (1) is licensed by the state as an emergency room or emergency department; (2) is held out to the public as providing care for emergency medical conditions without requiring an appointment; or (3) during its previous calendar year, has provided at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis.

**Emergency medical condition:** The statute defines an "emergency medical condition" as:

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part; or

(B) with respect to a pregnant women [sic] who is having contractions --

(i) there is inadequate time to effect a safe transfer to another hospital before delivery, or

(ii) that transfer may pose a threat to the health or safety of the woman or unborn child.

**Medical Screening Exam (MSE):** "The process required to reach with reasonable clinical confidence, the point at which it can be determined whether a medical emergency does or does not exist. 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) a screening process that is reasonably calculated to determine whether a medical emergency condition exists, it has met its obligations under [EMTALA]. Depending on the patient's presenting symptoms, the medical screening examination represents a spectrum 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 diagnostic tests and procedures."

**Stabilization:** "Under the statute, "to stabilize" an emergency medical condition means "to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to [a pregnant woman], to deliver (including the placenta)."

**Transfer:** "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:* (A) has been declared dead, or (B) leaves the facility without the permission of any such person." (AMA)



## EMTALA DECISION TREE

Scenario 1: Individual comes to a dedicated emergency department requesting examination or treatment for a medical condition.  
 -or-  
 Scenario 2: Individual comes to

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