

Emergency Medical Treatment and Active Labor Act

Deirdre Newton

Senior Counsel

NYC Health + Hospitals Office of Legal Affairs



What is EMTALA?

- The Emergency Medical Treatment and Active Labor Act is a 1986 statute that requires hospitals that (1) participate in Medicare and (2) have emergency departments to provide emergency services to presenting individuals, regardless of insurance status.

What does EMTALA require?

- “In the case of a hospital that has an emergency department, if any individual...comes to the emergency department and a request is made on the individual’s behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination....”

■ 42 USCS § 1395dd

Requirements, continued

- If the person has an emergency medical condition, the hospital must provide either
 - treatment to stabilize the emergency medical condition or
 - an appropriate transfer.

Where is the emergency department?

EMTALA applies when a person comes:

- to a licensed dedicated emergency department seeking care for a medical condition
- to other departments that offer care for EMC on an urgent non-appointment basis
- onto hospital property (campus, parking lot, sidewalk and driveway) and requests examination or treatment for an EMC
- to hospital property in an EMS ambulance or in a non-hospital owned ambulance and
- when the person is in a hospital owned ambulance anywhere.

When has a person come to the emergency department?

- The person may appear and request examination or treatment.
- A person may request treatment on behalf of someone else.
- If a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment then there is a request.

EMTALA Obligations

- A person who has come to the emergency department requesting examination for a medical condition must be screened to determine whether there is an emergency medical condition.
- The person must receive a screening exam that is appropriate for the medical condition.



Emergency Medical Condition

- “ A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances and/or symptoms of substance abuse) such that the absence of immediate medical attention” would place the individual’s health in serious jeopardy.
- A woman in active labor, without time for a safe transfer.

Other Requirements

- The hospital must have:
 - a compliance policy
 - a policy that sets out which medical personnel may perform the medical screening exam
 - signs that describe the hospital's EMTALA obligations
 - a central log of all patients who “come to the ED”
 - Refused, denied, treated, admitted, stabilized, transferred or discharged
 - records of transfers

Stabilization

- If there is an emergency medical condition, the hospital must:
 - Treat the EMC in the emergency department
 - Admit the patient
 - Make an appropriate transfer, if the patient requests it or the hospital lacks the capability to stabilize the patient.

When is a person stable for transfer?

- EMTALA defines stabilized as “no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during transfer”
- a pregnant woman has delivered the child and the placenta

When is a transfer appropriate?

- In general, if an individual at the hospital has an EMC that has not been stabilized, the hospital may not transfer the individual, unless:
 - The transferring hospital provides medical treatment within its capacity that minimizes the risks to the individual's health and, for women in labor, the health of the unborn child.

Transfer Documentation

- The individual (or legally responsible person acting on the individual's behalf) requests transfer after being informed of the hospital's EMTALA obligations and the risk of transfer.
- A physician must certify, based upon the available information, that the medical benefit of transfer outweighs the risks to the patient, or in the case of a woman in labor, to the patient or the unborn child.

Transfer Documentation (cont'd.)

- The physician certification must contain a summary of the risk and benefits associated with the transfer.
- A copy of the certification should be placed in the patient's medical record.

Consider State Law Requirements

- States may have particular documentation requirements or transportation requirements or a similar statute.

Reporting/Complaints/Penalties

- A receiving hospital is required to report an inappropriate transfer within 72 hours
- EMT's are required to report refusals.
- A hospital and/or physician may be fined up to \$50,000 per violation.
- A hospital's Medicare provider agreement may be terminated and a physician may be excluded from the program.
- Individuals may file a lawsuit.

■ Questions?