

EMTALA

Excerpts from May 2023 NASMHPD Children, Youth and Families Division Presentation:

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Emergency Medical Treatment and Active Labor Act (EMTALA): Basic History

- Passed in 1986 related largely to Medicare to prevent patient “dumping” which involved transferring uninsured patients for financial reasons from private to public hospitals regardless of medical need or stability
- Considered a significant law that prevents discrimination for people unable to pay
 - Original instances of transfers were of unemployed people and minoritized populations
 - Increase risk of death upon transfer when transferred in unstable conditions

Zibulewsky J (2001): <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1305897/>

Interpretations and Oversight of EMTALA

- With passage of EMTALA, CMS, Court decisions helped shape its authority
- Resulting landscape is that EMTALA now applies to broad hospital care, beyond emergency physicians
 - Imposes three legal duties
 - Applies to hospitals that participate in Medicare (which includes most hospitals)

EMTALA Duty 1 & 2:

- 1) Hospitals must perform medical screening for anyone who comes to the hospital and requests care, whether an emergency medical condition (EMC) exists
- 2) When there is an EMC, hospital staff must stabilize that condition to the extent of their ability or transfer to another hospital with the appropriate capabilities

Definition of Emergency Medical Condition

- An emergency medical condition is defined as "a 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 placing the individual's health [or the health of an unborn child] in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of bodily organs."

<https://www.acep.org/life-as-a-physician/ethics--legal/emtala/emtala-fact-sheet>

EMTALA Duty 3

3) Hospitals with specialized capabilities are required to accept transfers of patients in need of such specialized services if they have the capacity to treat them (e.g, specialized pediatric or trauma units)

- “Reverse Dumping” provision...
- Prevents specialized hospitals from accepting in transfer only those patients with the ability to pay for their services
- Capacity is not a fixed definition
 - Leaving open beds could be a violation
 - If the patient is sent over the receiving facility’s objection, once the patient arrives the receiving hospital is still required to take the patient, but then is obligated to report that the patient was sent....
 - Patients can refuse transfers but it should be done in writing

KNOW YOUR RIGHTS

EMERGENCY MEDICAL TREATMENT AND LABOR ACT (EMTALA)



EMTALA GUARANTEES ACCESS TO EMERGENCY MEDICAL SERVICES FOR INDIVIDUALS WHO PRESENT TO A HOSPITAL EMERGENCY DEPARTMENT REGARDLESS OF AN INDIVIDUAL'S ABILITY TO PAY

It also provides for appropriate transfers if the presenting facility is unable to provide the care or services necessary to stabilize a medical condition.



ALL INDIVIDUALS MUST BE SCREENED

All individuals who present to a hospital emergency department must be screened by Qualified Medical Personnel to determine the presence or absence of an emergency medical condition. EMTALA applies until either

(1) the medical screening exam does not identify an emergency medical condition or (2) the patient is provided with stabilizing treatment and/or an appropriate transfer.



STABILIZING TREATMENT MUST BE PROVIDED

Hospitals must make sure the patient is provided with stabilizing treatment (within the capabilities of the hospital's staff and facilities) before they can initiate a transfer to another hospital or medical facility or before they can discharge the patient.



NO DELAY IN EXAMINATION AND TREATMENT

Hospitals may not delay providing an appropriate medical screening examination or stabilizing medical treatment for any reason, including to ask about an individual's method of payment or health insurance status.



FOUR REQUIREMENTS FOR APPROPRIATE TRANSFER

A patient with an emergency medical condition may only be transferred after screening and the provision of stabilizing treatment. Four requirements must be met:

- The transferring hospital minimizes the medical risks (and in the case of a woman in labor, the medical risks of the fetus as well).
- The receiving medical facility has available space and qualified personnel for the treatment and agrees to accept the transfer.
- The transferring hospital sends all medical records related to the emergency condition that are available at the time of the transfer and any other records not yet available as soon as practicable.
- The patient is transferred using appropriate personnel and transportation, including the use of necessary and medically appropriate life support measures during the transfer.

Anyone can file an EMTALA complaint with the State Survey Agency. The State Survey Agency will investigate the issue and, when appropriate, verify corrective action is taken to ensure the hospital is in compliance with EMTALA. Visit the Quality, Safety and Education Portal (QSEP) to view an EMTALA overview video at [qsep.cms.gov](https://www.cms.gov/qsep)

<https://www.cms.gov/files/document/emtala-know-your-rights.pdf>

Thank you!
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STAY TUNED also for the 2023 Compendium in the
'Beyond Bed' series....!!!