

Compliance in the Age of COVID-19: EMTALA

Health care providers are responsible for maintaining compliance with the Emergency Medical Treatment and Labor Act (EMTALA) notwithstanding the present COVID-19 public health emergency. EMTALA is a federal law that requires hospitals to provide an appropriate medical screening examination (MSE) to determine if a medical emergency exists to anyone coming to a hospital emergency department (ED), regardless of their ability to pay.

CMS has clarified that Medicare-certified hospitals with emergency departments **must** provide an appropriate medical screening examination to every patient that comes to the ED, including those suspected of having COVID-19. If the exam indicates a possible COVID-19 case, the hospital should isolate the patient following the guidance established by the Centers for Disease Control (CDC) to minimize the risk of cross-contamination to other patients, visitors, and health care workers.

Options for ED COVID Case Triage

Providers should note that an EMTALA-compliant MSE does not have to take place in the ED. A hospital may set up alternative sites on its campus and redirect individuals to these sites after being logged in. The redirection and logging can even take place outside the entrance to the ED. The person doing the directing must be qualified¹ to recognize individuals who are obviously in need of immediate treatment in the ED. Signage may be used around the hospital to help direct individuals arriving with COVID-like symptoms to alternative MSE locations on the hospital property.

However, signage that presents barriers to individuals who are suspected of having COVID-19 from coming to the ED or otherwise refusing to provide an appropriate MSE to anyone coming to the ED for examination is a violation of EMTALA. In conducting pre-registration and diversion, providers may not mandate diversion should the patient request examination in the ED.

Non-Hospital COVID Screening Sites

Health care providers and public officials may designate non-hospital COVID-specific screening sites in the community. Such locations should not be held out to the public as a place that provides care for emergency medical conditions but solely as a screening site. Providers should staff screening sites with medical personnel trained to evaluate illness and be prepared to arrange for referral or transfer in the event an individual requires additional medical attention on an emergency basis.

Capacity Issues, Transfer, and Referral

As part of Medicare regulations, hospitals with capacity and the capability to provide stabilizing treatment must accept appropriate transfers from hospitals without the necessary capabilities. Hospitals should coordinate with their State/local public health officials regarding appropriate placement of individuals who meet specified COVID-19 assessment criteria, and the most current standards of practice for treating individuals with confirmed COVID-19 infection status. As in any case concerning a hospital's EMTALA obligations with respect to transfers of individuals, CMS would evaluate the capabilities and capacity of both the referring and recipient hospitals in order to determine whether a violation has occurred.

If a hospital is operating at or in excess of its normal operating capacity and is unable to get sufficient staff, the facility may shut down its ED without violating EMTALA. In such an instance, the hospital would be unable to screen and treat individuals entering the ED, and thus effectively go on diversion until it regained capacity to handle new patients.

¹ Qualified personnel include physicians, nurse practitioners, physician's assistants, or RNs trained to perform MSEs and acting within the scope of their State Practice Act.