



Emergency Medical Treatment And Labor Act (**EMTALA**)

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Objectives

At the end of the presentation the attendee will be able to:

- ❑ Describe EMTALA regulatory requirements for Medicare participating hospitals.
- ❑ Apply EMTALA regulatory requirements to various case scenarios.
- ❑ Describe the determination process whether a hospital is in violation of its EMTALA obligation.
- ❑ Describe the enforcement actions on hospitals that violate EMTALA requirements.



EMTALA HISTORY

September 15, 2010

NMHA Meeting, Albuquerque, NM





History

- Reports of widespread “patient dumping” began to appear in the press and medical literatures in the early 1980s
- In 1986, approximately 250,000 patients were inappropriately transferred resulting in increased morbidity and mortality.¹

¹ Schiff, RL, Schlosser, JE, et al: Transfers to a public hospital, a prospective study of 467 patients. NEJM, 1986.



History

- There were highly publicized incidents where hospital EDs allegedly, based on patient's financial inadequacy, failed to provide MSE that would have been provided a paying patient, or transferred or discharged a patient without taking steps that would have been taken for a paying patients.
- In response, Congress enacted **EMTALA** as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985



History

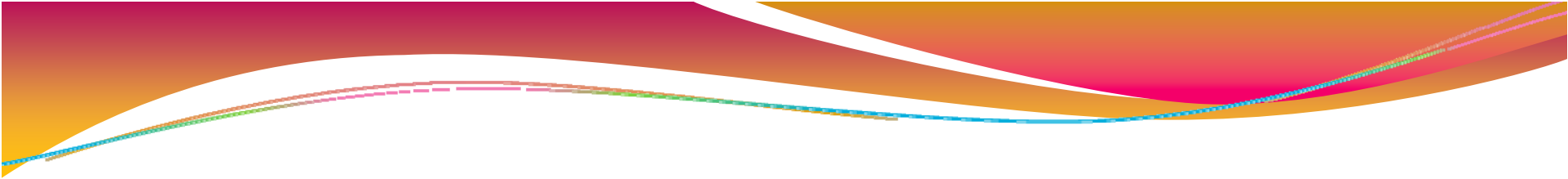
- **EMTALA** was created within the Medicare section of the COBRA 1985 legislation.
- **EMTALA** outlines the legal responsibilities of all Medicare participating hospitals with respect to individuals presenting to the hospital asking for an examination of a medical condition.



Emergency Medical Treatment and Labor Act (**EMTALA**)

25 years after the law was enacted by Congress,

**Why does it remain
controversial?**



EMTALA Related Requirements

Section 1866 (SSA)/42 CFR 489.20

- EMTALA Compliance Plan
- Reporting Requirement
- Signage
- Medical Records Requirement
- On-call Physician
- Central Log

EMTALA Related Requirements

A participating hospital with a Dedicated Emergency Department (DED) must have policies and procedures to comply with 489.24 including:

- ❑ Reporting Requirement (489.20(m))
 - ❑ Within 72 hours of the discovery to CMS or State Survey Agency
- ❑ Retention of medical records 489.20(r))
 - ❑ 5 years for any patient transferred to and from the hospital.



EMTALA Related Requirements

EMTALA rights sign (489.20 (q))

- ❑ Noticeable by all individuals in any area of the ED
- ❑ Specifying the examination and treatment rights of individuals and women in labor requesting an ***examination for a medical condition***
- ❑ Whether the hospital participates in Medicaid
- ❑ Legible within 20 feet or from any vantage point

EMTALA Related Requirements cont...

- ❑ Central Log requirement (482.20 (r)(3))
 - ❑ Documenting whether the patient:
 - ❑ Treated, refused treatment or was refused treatment
 - ❑ Disposition: Transferred, Admitted, or Discharged
 - ❑ Stabilized
 - ❑ Left against medical advise (AMA). Document patient's signature on AMA form or at least the attempt to get the patient's signature.
 - ❑ Hospital may maintain separate logs for departments that may meet the definition of a DED, e.g., L & D and Pediatric.
 - ❑ Patients who leave before opportunity to log
 - ❑ Gather: Date, time, individual characteristics and if possible nature of complaint.

EMTALA Related Requirements cont...

- ❑ Maintain an On-call list of physicians (489.20 (r)(2))
 - ❑ List the names of physicians including specialists and subspecialists
 - ❑ Current members of the medical staff or who have hospital privileges
 - ❑ Available either for phone consultation or to come to the ED and provide stabilizing treatment
 - ❑ Adequate on-call coverage consistent with the services provided by the hospital and its resources

Availability of On-Call Physician (489.24(j))

- Written Policies & Procedure
 - On-call physician not able to respond
 - Response time in minutes
 - Provide emergency services to meet the needs of individuals
 - On-call physicians schedule elective surgery when on-call
 - On-call physicians have simultaneous on-call duties
 - Hospital participates in community call plan

On-Call Physician Options

❑ Community Call Plan

- ❑ Specific on-call services provided by each hospital including dates and times
- ❑ List of physicians available to provide on-call coverage
- ❑ Geographic parameters of on-call coverage
- ❑ Each hospital must continue to provide MSE and stabilizing treatment

❑ Simultaneous Call

- ❑ P & P to follow when the on-call physician is not available
- ❑ All hospitals where the physician is on call simultaneously must have back-up plans established

❑ Scheduled Elective Surgery

- ❑ Back-up plans established



EMTALA REQUIREMENTS

Section 1867 (SSA)/42 CFR 489.24

- Medical Screening Examination
- Stabilizing Treatment
- Delay in Examination and Treatment
- Appropriate Transfer
- Recipient Hospital Responsibility
- Whistleblower Protection

EMTALA Requirements

Medical Screening Examination

(489.24(a)(1)(i))

- ❑ Provide an appropriate MSE regardless of diagnosis, financial status, race, sex, color, national origin or disability.
- ❑ Performed by a physician or other Qualified Medical Personnel (QMP)
 - ❑ QMPs approved by the governing body may include: PAs, NPs, APRNs, RNs, Certified Nurse Midwives.
 - ❑ Certified mid-wife and other designated QMPs may certify false labor
- ❑ **Purpose:** to determine with the presence or absence of an Emergency Medical Condition (EMC).
- ❑ MSE must be conducted using all available resources, including all specialist on-call, at the time of presentment.



Emergency Medical Condition (EMC)

- Definition of EMC at 489.24 (b)
 - A Medical condition manifesting itself by acute symptoms that the absence of immediate medical intervention could result in:
 - Placing the health of the individual in serious jeopardy
 - Serious impairment to bodily functions
 - Serious dysfunction of any bodily organ or part
 - Pregnant Woman who is having contractions
 - There is inadequate time to effect a safe transfer before delivery
 - The transfer may pose a threat to the health and safety of the woman or unborn child.

Applicability of EMTALA

- ❑ Medicare Participating Hospital
- ❑ Dedicated Emergency Department (DED), may include off-campus Emergency Departments (42 CFR 489.24(b))
 - ❑ Licensed as an ED (State)
 - ❑ Held out to the public (Hospital advertises ER Services)
 - ❑ 1/3 of outpatient visits for treatment of emergency conditions in a calendar year.
- ❑ Within hospital property - (includes hospital owned ambulances not operating under community protocol)
 - ❑ Individual requests an examination of a medical condition. Including born alive infants.
 - ❑ Prudent Layperson concludes an Emergency Medical Condition (EMC) exists.



CASE STUDY # 1

- 19 year old female, 8 months pregnant with contractions presented to the ED
- ED staff told her that “nothing could be done for her” at this hospital
- Parents took her to Bigger Hospital
- She delivered en route



CASE STUDY # 1

Which of the following is NOT true of an appropriate MSE?

1. It must be timely.
2. It must be performed by a qualified medical personnel.
3. It must only occur after triage has been completed.
4. It should be based on the individual's presenting signs and symptoms and not their ability to pay.



CASE STUDY # 1

Who does not need an MSE?

1. An individual who requests one when he/she comes to the ED.
2. Any individual who comes to the ED asking for an appointment with his/her doctor.
3. Any individual who is sitting in the ED waiting room who collapses.
4. Any individual anywhere in the hospital who requests evaluation for an emergency medical condition.



CASE STUDY # 1

What is not always part of an appropriate MSE?

1. The hospital must provide and perform an MRI on all patients who requests one.
2. The hospital must provide an appropriate MSE within the capability of the hospital.
3. The hospital must provide an appropriate MSE utilizing the ancillary services available to the ED.
4. The hospital must provide an MSE that is appropriate for the presenting signs and symptoms.



CASE STUDY # 1

The failure to provide an appropriate MSE in this case should be cited because?

1. The PA didn't get to the patient quickly enough, so her MSE was not timely.
2. Two staff members told the patient she could not receive what she needed at Tiny Hospital.
3. The patient wasn't logged in.
4. The AMA paperwork was not completed.



CASE STUDY # 1

Did the patient have an emergency medical condition?

1. No, because she did not receive a pelvic exam.
2. No, since she left before it could be determined.
3. Yes, because she gave birth after she left Tiny Hospital.
4. Maybe, but she needed an MSE to be performed to determine yes or no.



CASE STUDY # 2

- Adult male with psychiatric problem was brought to the ED.
- The individual informed the ED staff that he did not want to be at the hospital.
- ED physician informed staff to get the individual sign AMA form.



CASE STUDY # 2

Should a survey investigation be conducted even though the hospital self-reported the incident?

1. Yes
2. No
3. Need more information



CASE STUDY # 2

Under which of these circumstances would a hospital with an ED NOT be obligated to perform a MSE on an individual who comes to the ED?

1. When an individual comes every day with a different problem and looks well each time.
2. When an individual refuses to be seen after being notified of the risks and benefits of that decision.
3. When the individual is transferred from a psychiatric facility, under a commitment order.
4. When the individual wants refills of their blood pressure medication



CASE STUDY # 2

Did the individual have an emergency medical condition?

1. Yes
2. No
3. Not enough information given



CASE STUDY # 2

Based on the information presented in this case, did the hospital violate EMTALA?

1. Yes
2. No
3. Not enough information given



CASE STUDY # 2

What additional documentation would you need/look for to support an EMTALA violation??

1. ED physician's note
2. Discharge paperwork
3. Hospital policy regarding AMA patients
4. All of the above

EMTALA Requirements

Stabilizing Treatment (489.24 (d)(1)(i))

- Applicable only if:
 - MSE determines the presence of an EMC
 - Hospital has the capacity and capability.
- Definition of Stabilized – (489.24(b))
 - Caveat: legal definition \neq medical definition
 - No material deterioration of the condition is likely to result from or occur during the transfer
 - Pregnant woman has delivered the child and the placenta.
- Definition of “To Stabilize”
 - To provide medical treatment of the EMC to assure that no material deterioration will occur.



EMTALA Requirements

Stabilizing Treatment (489.24 (d)(1)(i)) continued....

- The EMTALA obligation ends when the QMP certifies that:
 - That no EMC exists (underlying condition may persist)
 - That an EMC does exist and the individual is appropriately transferred to another facility
 - That an EMC exists and the individual is admitted to the hospital for further stabilizing treatment.
 - Admission must be in good faith in order to stabilize the EMC (overnight stay)
 - Patient refusing stabilizing treatment (also applicable on transfers)
 - Hospital should communicate benefits and risks of treatment or transfer and get a written informed refusal from the patient.



CASE STUDY # 3

- 28y female who was 6 months pregnant was brought to the ED with complaint of “I can’t breathe.”
- The individual was transferred to another hospital.
- En route to the hospital, her condition deteriorated and ambulance diverted to a closer hospital.
- She was intubated.



CASE STUDY # 3

Based on the medical records, Misty's signs and symptoms represented an EMC.

- No
- Yes



CASE STUDY # 3

Was stabilizing treatment provided?

- Yes
- No



CASE STUDY # 3

Is the diversion to the OnTheWay Hospital evidence that LoCare Hospital failed to minimize the risk of the transfer?

- Yes
- No



CASE STUDY # 3

LoCare Hospital utilized all its resources to minimize the risk of transfer, therefore, met its EMTALA obligation.

- True
- False



CASE STUDY # 3

Should the on-call physician have re-evaluated Misty's condition prior to ordering the transfer to another hospital?

- Yes
- No



CASE STUDY # 4

- 15 year old male was brought to the ED with complaints of pain on the abdomen.
- ED physician examined the individual and requested the on-call surgeon to come to the ED to examine the individual.
- On-call surgeon admitted the individual to the hospital for appendectomy.
- Individual was discharged and patient was taken to another hospital by parents for the surgery.



CASE STUDY # 4

Was appropriate MSE performed?

1. Yes
2. No



CASE STUDY # 4

Which of the following statement is true?

1. Once a patient is admitted to the hospital, the hospital had met its EMTALA obligation.
2. The hospital failed to provide stabilizing treatment for the individual's EMC, therefore, violated EMTALA.
3. The hospital had no obligation to care for this patient when the surgeon wrote a discharge order.
4. None of the above



CASE STUDY # 4

The hospital met its EMTALA obligation because Ryan was taken to another hospital and had a good outcome.

1. True
2. False



CASE STUDY # 4

Based on the facts of this case, the hospital will most likely be cited for?

1. Appropriate transfer and MSE
2. On-call requirement and Appropriate transfer
3. Condition of Participation for Discharge Planning, MSE, and Delay of treatment
4. Stabilizing treatment, Appropriate Transfer and Condition of Participation for Discharge Planning



EMTALA Requirements

Delay in examination or stabilizing treatment (489.24(d)(4))

- Reasonable registration allowable but must not delay an appropriate medical screening examination.
- May not inquire about method of payment
- May not require pre-authorization from insurance
- Physician consultation must be relevant to EMC



EMTALA Requirements

Transfer (489.24(e))

□ Definition of Transfer

- “The movement (including the discharge) of an individual outside a hospital’s facilities at the direction of any person employed by the hospital”

□ Transfers should be exercised after:

- An appropriate medical screening examination performed
- Hospital has exhausted all of its capabilities to resolve the EMC
- Hospital has minimized the risks of the individual’s health or the unborn child but does not have capacity and capability to stabilize the EMC.



EMTALA Requirements

Transfer (489.24(e)) continued...

□ Appropriate Transfer Requirements

- Individual requests a transfer after being informed of risks and benefits (when patient unconscious physician certification applies)
- Physician has certified that medical benefits outweigh the risks of the transfer (QMP may certify in the absence of a physician)
- Hospital has contacted an accepting facility with the capacity and capability to provide stabilizing treatment
- Transferring hospital sends all pertinent records with the patient
- Transfer is effected through qualified personnel and transportation equipment



CASE STUDY # 5

- 12-days old infant brought to the ED with breathing problems.
- Infant needed care beyond the capabilities of the hospital.
- Infant was transferred to another hospital.



CASE STUDY # 5

Based on the information provided on this case, which of the following EMTALA requirements were violated?

1. Central Log
2. Medical Records
3. Medical screening examination
4. Stabilizing treatment
5. Transfer
6. All of the above
7. 1, 2, 4, and 5



CASE STUDY # 5

It is an EMTALA violation to transfer a patient with an unstable medical condition

1. True
2. False



CASE STUDY # 5

Would there have been a violation if an ambulance had transported the infant?

1. Yes
2. No



CASE STUDY # 5

A hospital must exhaust all its available resources to resolve an EMC before transferring a patient.

1. True
2. False



CASE STUDY # 5

A transfer is considered appropriate if all of the following were completed, except:

1. Appropriate MSE was done and the risks of transfer were minimized.
2. There was a physician to physician communication about the transfer.
3. All medical records available at the time of the transfer were sent to the recipient hospital.
4. The mode of transportation was staffed with qualified personnel and equipment.



CASE STUDY # 5

The hospital meets its EMTALA obligation if a patient was discharged home from the ED regardless of the status of the medical condition.

1. True
2. False



EMTALA Requirements

Whistleblower protection (489.24(e)(3))

- ❑ Hospital not penalize or take adverse action if:
 - ❑ Physician or QMP refuses to authorize transfer of an individual who has an EMC that has not been stabilized
 - ❑ Any hospital employee who reports potential violation of an EMTALA requirement

CASE STUDY # 6

- Pregnant woman, who is also a diabetic, presented at the ED with flu-like symptoms and went into labor.
- She was transferred to another hospital prior to a MSE.
- She arrived at the other hospital and an emergency caesarean section was performed due to:
 - Placental abruption of one baby
 - Foot of another baby was protruding through the cervix.
- A staff nurse reported the potential violation to CMS.
- The staff nurse was terminated when surveyors arrived at the hospital.



CASE STUDY # 6

Did the individual have an EMC?

1. Yes
2. No
3. Not enough information



CASE STUDY # 6

Which is not an element of an appropriate transfer?

1. The recipient hospital must not refuse the transfer if it has the capability to provide stabilizing treatment.
2. The patient requests a transfer in writing.
3. The physician certifies the risks and benefits of the transfer.
4. The patient is transferred by necessary personnel and equipment.
5. Available medical records are sent to the recipient hospital during transfer.



CASE STUDY # 6

What EMTALA requirements were potentially violated?

1. Medical screening examination
2. Stabilizing treatment
3. Transfer
4. Whistleblower protection
5. All of the above



EMTALA Requirements

Recipient Hospital Responsibilities (489.24(f))

- ❑ Medicare Participating Hospitals within US boundaries
- ❑ Hospitals that have special capabilities including but not limited to:
 - ❑ Burn units
 - ❑ Shock-trauma units
 - ❑ Psych Hospitals
 - ❑ Neonatal ICU
- ❑ Regardless of whether the hospital has a DED

Does not apply:

- ❑ On request to accept inpatient transfers



EMTALA Requirements

Recipient Hospital Responsibilities (489.24(f)) continued...

- ❑ Hospital may not refuse an appropriate transfer if the hospital has:
 - ❑ Capacity
 - ❑ Capability
- ❑ Transport Service should not be a condition for accepting the transfer
- ❑ Patients who are in an “observation status” in the ED
 - ❑ EMTALA protection intact
- ❑ Lateral transfer: transfer between facilities of comparable resources and capabilities
 - ❑ Has a serious capacity problem
 - ❑ Mechanical failure of equipment
 - ❑ Loss of power



CASE STUDY # 7

- 65-year old man presented to the ED with complaints of SOB, chest pain and nausea.
- ED physician attempted to transfer the man to Heart Hospital.
- Heart Hospital refused to accept the transfer because the man had no insurance coverage.



CASE STUDY # 7

What is permitted under EMTALA?

1. A hospital with specialized capabilities can not refuse to accept any transfer of patients requiring those capabilities.
2. The receiving hospital has every right to request for financial information in order to make a decision whether to accept the transfer or not.
3. The receiving hospital may refuse to accept a transfer if it has no capacity or capability to treat the individual's medical condition.
4. None of the above.



CASE STUDY # 7

Since the campus of Heart Hospital that was contacted for the transfer did not have an ICU bed at the time the transfer request was made, there was no EMTALA violation.

1. True
2. False



CASE STUDY # 7

It is appropriate for a recipient hospital to require the use of its ground or air ambulance in order to accept a transfer of a patient to its hospital.

1. True
2. False



CASE STUDY # 7

A hospital in Tucson, AZ that refused to accept a patient with an EMC form a hospital ED in Sonora, Mexico can be cited for EMTALA violation.

1. True
2. False



EMTALA Enforcement

- ❑ **CMS: Medicare Termination**

- ❑ **USDHHS Office of the Inspector General:**

- ❑ Hospital:

- ❑ CMP of \$50,000 per violation for hospital (\$25,000 if hospital has less than 100 beds)

- ❑ Physician:

- ❑ CMP of \$50,000 per violation

- ❑ Exclusion from Medicare and Medicaid Programs



CMS - EMTALA Enforcement

❑ Possible Outcomes

- ❑ No violation (no termination action)
- ❑ Past Violation (no termination action)
- ❑ Violation
 - ❑ Immediate Jeopardy (23 day)
 - ❑ Non-Immediate Jeopardy (90 day)

- ❑ Investigations maybe referred to the Quality Improvement Organization (QIO/TMF) for an advisory opinion.



Civil Action

- ❑ Two year statute of limitation on civil cases alleging EMTALA violation

- ❑ CMS not involved
 - ❑ Complainant is not required to file a complaint with CMS or have a substantiated EMTALA violation

- ❑ Civil suit is independent from federal action against a hospital and/or physician.



What you can do to avoid an EMTALA violation

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Avoiding a Violation

- ❑ Routinely implement a self-inspection of the hospital's compliance with EMTALA (QAPI)
- ❑ Ensure that medical and hospital staff are aware of the hospital's property
- ❑ Post required EMTALA signs
- ❑ Provide appropriate medical screening examination, stabilizing treatment or transfer
- ❑ Maintain sufficient on-call policies; ensure that the medical staff bylaws make on-call staffing the responsibility of all physicians and take immediate action against physicians who fail to respond

Avoiding a Violation

- ❑ Advise hospital staff not to seek prior authorization from individuals for payment before MSE is underway
- ❑ Obtain written informed consent from individuals who withdraw their request for examination and treatment
- ❑ Accept transfers if you have capacity and capability
- ❑ Provide available documents related to transfer
- ❑ Report all EMTALA violations of a receiving/transferring hospital, or a physician

Avoiding a Violation

- ❑ Maintain and document fully and clearly (e.g., transfers, central logs, on-call schedule, discussions with receiving hospitals and unusual discussions regarding consults).

- ❑ Consider self-reporting when found to be in violation of EMTALA
 - ❑ Investigate fully any potential violation upon discovery
 - ❑ Immediately begin corrective action plans, and
 - ❑ Monitor compliance

- ❑ Protect whistleblowers

EMTALA Online Resources

- ❑ Code of Federal Regulation 482.20 and 482.24
 - ❑ <http://www.gpoaccess.gov/cfr/index.html>

- ❑ State Operations Manual
 - ❑ <http://www.cms.hhs.gov/Manuals/IOM/list.asp>

- ❑ EMTALA Interpretive guidelines (Updated Appendix V)
 - ❑ http://www.cms.hhs.gov/manuals/downloads/som107_Appendicestoc.pdf

- ❑ Survey and Certification Letters
 - ❑ <http://www.cms.hhs.gov/SurveyCertificationGenInfo/PMSR/list.asp>

- ❑ EMTALA overview
 - ❑ <http://www.cms.hhs.gov/EMTALA/>

Questions ?



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EMTALA

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