



CMS EMTALA Guidance

The Texas Hospital Association reminds member hospitals that CMS has issued revised EMTALA guidance since the start of the COVID-19 pandemic. The [March 30, 2020 guidance](#) (which includes a fact sheet and FAQs) and the [September 17, 2021 guidance](#) provide information regarding hospitals' obligation to comply with EMTALA.

The CMS guidance is comprehensive and addresses several issues, including obligations and expectations to screen and stabilize or transfer individuals, recommended screening factors, the use of alternate screening sites, enforcement standards, concerns related to lack of PPE, and the use of telehealth, among other issues.

As a reminder, hospitals subject to EMTALA *must* conduct an appropriate medical screening examination (MSE) of *all individuals who come to the emergency department (ED) and request examination or treatment*. Based on the CMS guidance:

- The MSE must be appropriate to the presenting signs and symptoms, as well as the capability and capacity of the hospital, and can be as simple or complex as needed to determine if an emergency medical condition (EMC) exists.
- Hospitals should ensure all staff who may come into contact with a patient seeking emergency care are aware of the hospital's obligation under EMTALA.
- Providers have discretion to determine when an emergency medical condition exists, as, under EMTALA, an EMC is present when there are acute symptoms of enough severity such that the absence of immediate medical attention could reasonably be expected to result in serious impairment or dysfunction, per 42 CFR 489.24(b).
- Under EMTALA's transfer requirement, a hospital's ability to transfer an individual to another hospital is restricted unless the individual is stabilized. If the individual is not stabilized, they may only be transferred if the individual requests the transfer or if the medical benefits of the transfer outweigh the risks. Hospitals may transfer patients, as appropriate, to facilities with specialized capabilities - however, the receiving hospital may refuse the transfer if they do not have capacity to provide necessary care and treatment.

- A hospital's EMTALA obligation ends when a physician or qualified medical person has decided:
 - That no emergency medical condition exists (even though the underlying medical condition may persist);
 - That an emergency medical condition exists and the individual is appropriately transferred to another facility; or,
 - That an emergency medical condition exists and the individual is admitted to the hospital for further stabilizing treatment.
- The determination of an emergency medical condition is the responsibility of the examining physician or other qualified medical personnel.
- In cases where an EMC is unlikely, a hospital's EMTALA obligations are satisfied if an individual indicates they are not seeking emergency care and are appropriately questioned by a qualified medical professional to ensure an EMC does not exist.

THA encourages member hospitals to review the CMS guidance for more information on EMTALA obligations and will provide any additional information as it is available.

Contact a member of THA's advocacy & legal teams for additional information:

[Cesar Lopez](#), J.D., LL.M, associate general counsel, 512/465-1027

[Carrie Kroll](#), vice president advocacy, quality and public health, 512/465-1043