



Texas Hospital Association's EMTALA Guidance

April 1, 2020

On March 30, the Centers for Medicare & Medicaid Services revised its EMTALA [guidance](#) in response to ongoing concerns related to COVID-19.

This revised 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 (including the establishment of drive-through testing sites), enforcement standards, concerns related to lack of PPE, and the use of telehealth, among other issues. CMS also updated the included fact sheet and Q&A sections.

Hospitals subject to EMTALA *must* conduct an appropriate medical screening examination (MSE) of *all individuals who come to the emergency department (ED)*, including individuals who are suspected of having COVID-19, and must apply appropriate COVID-19 screening criteria when applicable, immediately identify and isolate individuals who meet such screening criteria, and contact state or local public health officials to determine next steps. Hospitals should consult [CDC guidance](#) and local and state guidance.

Hospitals may not refuse to allow individuals with suspected cases of COVID-19 into their ED and may not decline to perform an MSE on an individual with potential or suspected COVID-19 due to a lack of PPE or specialized equipment/facilities. General EMTALA obligations continue to apply, including those regarding specialized capabilities, transfers, and diversionary status. However, based on CMS' guidance:

- Hospitals and providers have discretion to determine what constitutes an appropriate medical screening exam, as the content of the MSE may vary according to the individual's presenting signs and symptoms and can be as simple or complex as needed to determine if an emergency medical condition (EMC) exists.
- 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).
- Hospitals may set up alternative screening sites on campus, as the MSE does not have to be the ED and patients can be redirected to these alternate sites for the MSE. The patient should be logged in where they are seen, and may be redirected after first presenting to the ED. The person redirecting patients from the ED should be qualified (e.g., a RN) to recognize an obvious need for immediate treatment in the ED. Non-clinical staff stationed at other entrances may provide redirection to an alternative screening location for COVID-19 testing.

- Hospitals and local communities may set up alternate sites for screening; alternate testing sites not otherwise under the control of a hospital are not subject to EMTALA, even if hospital personnel assist with testing. Community testing sites with appropriate personnel and should have protocols in place to deal with patients who require transport to a hospital.
- An MSE must be conducted by qualified personnel, which may include physicians, nurse practitioners, physician's assistants, or RNs trained to perform MSEs and acting within the scope of their State Practice Act. Hospitals may request a waiver to allow qualified, authorized medical staff to perform a MSE if acting within their scope of practice and licensure but not yet designated in hospital bylaws.
- Hospitals may use telehealth to perform a MSE; the qualified medical professional may be onsite or offsite, but must meet other EMTALA requirements. The use of telehealth to conduct MSEs on patients who have not presented to hospital does not create EMTALA liability.
- A hospital's EMTALA obligations are satisfied if an individual receives an appropriate medical screening and otherwise meets criteria for a COVID-19 person under investigation but is determined to show no signs or symptoms indicating an EMC.
- 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.
- 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.

THA believes this guidance provides ample flexibility in meeting EMTALA obligations and allows for alternate MSE sites as may be appropriate. **Nothing herein is intended as legal advice from THA. Please review CMS's guidance to determine the best course of action for your facilities.**

THA remains in contact with state and federal officials regarding COVID-19 and continues to discuss EMTALA obligations and the appropriate use of alternate MSE sites. THA will provide any additional information as it is available. Contact THA's associate general counsel, [Cesar Lopez, J.D.](#), with questions.