

Aspirus EMTALA

Passion for excellence. Compassion for people.



Objectives

- Define EMTALA
- Understand Aspirus procedure
- Understand EMTALA requirements
- Understand regulations and/or citations for failing to comply with EMTALA

The EMTALA Guiding Principle

EMTALA requires that if an individual comes to the emergency department (“ED”) requesting care, the hospital must provide an appropriate screening examination to determine whether the individual has an emergency medical condition (“EMC”). If the individual is found to have an EMC, the hospital is required, within its capability and capacity, to provide stabilizing treatment or provide an appropriate transfer to stabilize the individual.

Guiding Principle #1: “Comes to the ED”

- There are four ways by which a patient can fulfill the “comes to” requirement of EMTALA:
 - The patient presents to a hospital’s dedicated ED and requests care for an EMC.
 - The patient is outside the dedicated ED but on hospital property within 250 yards of the main building and presents with an EMC.
 - The patient is in a hospital-owned and operated ambulance for purposes of examination and treatment of an EMC if the ambulance is not on hospital property; or
 - The patient is in a nonhospital-owned ambulance that has arrived on hospital property for examination and treatment of an EMC at the hospital’s dedicated ED.

In addition, it is important to understand if a request is made for examination and treatment of an EMC or if a prudent layperson observer would believe that examination and treatment for an EMC is needed.

Guiding Principle #2: Medical Screening Exam

- When a patient “comes to the ED”, the hospital is required to perform a medical screening exam (“MSE”) by a qualified medical professional (e.g., ED physician, Advanced Practice Clinician (Physician Assistant, Nurse Practitioner)) as determined by medical staff by-laws.
- MSE is conducted to determine if an EMC exists and requires stabilization or an appropriate transfer.
- All patients must have a MSE regardless of their ability to pay and be treated in a uniform manner.
- The MSE is a process required to reach, with reasonable confidence, the point at which it can be determined the person has an EMC. A MSE can range from a quick evaluation to a much longer evaluation.

Guiding Principle #3: Appropriate Transfer

- A transfer to another medical facility will be appropriate only when the following have occurred.
 - Transferring hospital provides medical treatment within its capacity that minimizes the risks to the individual;
 - Receiving facility has available space and qualified personnel to treat the individual and has agreed to accept transfer of the individual;
 - Transferring hospital sends all medical records (e.g., available history, results of tests/procedures, preliminary diagnosis, vital signs, transfer certification, etc.) related to the emergency condition which the individual presented and that are available at the time of transfer; and
 - Transfer is facilitated through qualified personnel and transportation equipment including the use of necessary and medically appropriate life support measures during transfer.

EMTALA

Introduction/Definition

- **Emergency Medical Treatment & Active Labor Act**
 - Applies to all Medicare hospitals with Emergency Departments (ED).
 - Requires Physicians to examine, treat or appropriately transfer a patient in an emergency department.
 - Is commonly known as the Patient Anti-Dumping Statue.
- Aspirus must:
 - Provide emergency services to **ALL** patients regardless if the patient can pay, insurance status, citizenship, ethnicity, ...
 - Prevent discrimination of treatment of patients with emergency medical conditions.

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Aspirus Protocol

- If a patient presents on the **hospital campus** and requests emergency medical attention **or appears** to have an emergency medical condition, **or** is in active labor, it is important to follow these important steps:
- Aspirus must:
 - Follow your hospital policy on transporting individuals to the emergency room and/or birthing center (for active labor patients only). **Do not** allow the patient to drive to the nearest entrance!
 - Do not obtain any insurance or financial information prior to the patient being seen by a qualified medical professional and a medical screening exam has been completed.

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Requirements

- Screen: Perform a medical screening exam (MSE) on any person coming to the emergency room seeking treatment.
- Performed by a qualified medical person (QMP)
 - MD, DO, PA, NP, Midwife
 - Defined by hospital by laws, rules, and regulations.
 - Hospitals may allow a non-physician qualified QMP to perform MSE's but they must meet certain requirements and be approved by the hospital's medical staff.
- MSE requirements (Triage does not equal MSE): may include, but are not limited to:
 - Complete medical history
 - Taking vital signs at regular intervals
 - Physical exam
 - Necessary labs or imaging studies

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Scope of the MSE

- Psychiatric or Intoxicated Patients
 - Identify any possible physical cause for the patient's symptoms.
 - Assess for Trauma,
 - Medical disease,
 - Side effects of medication, or
 - Other psychiatric trauma or disorder.
- MSE cannot be delayed to inquire about payment or insurance status.
 - To comply with EMTALA do not talk about payment until AFTER the patient has been screened and stabilized.
 - Do not try and convince a patient to leave before a MSE is completed by pointing out the cost of emergency services or the wait times.

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Treating of Pregnant Women

- Active Labor
 - Contractions are considered to be medically unstable (active labor).
 - While in active labor it is not considered to be a safe transfer to another facility.
 - A woman is in active labor is considered stable only after she has delivered the baby and placenta.
- Not in Active Labor
 - A QMP must certify that the patient is in false labor.
 - Abnormal symptoms must be normalized through treatment or rationalized.

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- Aspirus must:
 - Treat any patient with an emergency medical condition (EMC) until stable, or must transfer the patient.
 - EMC definition: When absence of immediate medical attention that could result in:
 - Placing health of a person or unborn child in serious jeopardy,
 - Serious impairment to bodily function,
 - Serious dysfunction of part of the body,
 - Severe pain.
 - No EMC found: Hospital has no further legal obligation to treat the patient.

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- Aspirus must:
 - Stabilize: Provide medical treatment of an EMC within the capabilities of the facility and staff.
 - Transfer:
 - Transfer a patient only when appropriate.
 - Care is not available at the current facility .
 - Unstable patients can not be transferred.
 - Transfers must be certified or requested.
 - Certified: Treating physician must certify that the expected benefits outweigh the risks. This must documented and supported within the patient's medical record.
 - Requested: The patient could request a transfer
 - > The hospital must explain the EMTALA duty to provide stabilizing care and potential risk of transfer.

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Hospital: Before Transfer

- Treat and stabilize patient to make transfer as safe as possible.
- Patient must sign certification/informed consent for transfer.
- Contact receiving hospital.
- The receiving hospital must accept transfer
 - The receiving hospital must have the space and personnel to care for the patient.
- Send copies of the medical records and test results which includes:
 - Signs and symptoms,
 - Diagnosis made,
 - Treatment given,
 - Results of lab or imaging studies.
- Arrange necessary personnel and equipment for the transfer.
- After transfer, the transferring hospital has no further EMTALA duty to the patient.

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Transfer: Receiving Hospital

- Must accept transfer if hospital's capabilities to treat the patient exceeds risk of transfer.
- The Centers for Medicare and Medicaid Services expects receiving hospitals to do all things possible to accept incoming patients.
- Not obligated to conduct another MSE.
- Receiving hospital must report cases of inappropriate transfers or EMTALA violations within 72 hours and are protected against retribution under the law.

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- Patient Refusal of MSE or Treatment: If a patient refuses treatment the hospital is not required to provide an MSE
- Next Steps:
 - Inform patient of risks of refusal.
 - Document carefully in the medical record.
 - An Informed Consent to Refuse form should be used.
 - Form lists the potential benefits and risks of services offered.
 - Obtain patient's or his or her legal representative signed written refusal.

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Signage

- Must be posted in public entrances, registration areas and emergency department waiting areas.
- Signs indicate:
 - Patients rights under EMTALA.
 - Should explain that the hospital must provide emergency services regardless of the patients ability to pay.

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On-Call Physicians

- EMTALA requires hospitals to have physicians On-Call to stabilize patients.
- Must respond within a 'a reasonable amount of time' when requested.
- Hospitals must have a policy in place for back-up or transfer if on-call physician cannot respond.
- The list needs to be easily accessible.
- If the physician does not respond to the call:
 - The physician's name and address must be documented in the patient's record and in any transfer papers if this results in a transfer.
 - The physician must receive corrective action in according with medical staff by-laws, rules, and regulations.
 - The hospital must document the corrective action.

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- Enforcing EMTALA:
 - The Centers for Medicare & Medicaid Services (CMS) established the EMTALA Technical Advisory Group (TAG). This group helped to:
 - Review regulations.
 - Provide recommendations.
 - Provide information on the EMTALA regulations.
 - The TAG recommendations were adopted by CMS.

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- CMS reviews and investigates ALL EMTALA complaints.
 - If complaints appears to be valid, CMS will ask the state licensing official to investigate.
 - If substantial, CMS initiates the process to terminate the hospital's Medicare provider agreement within 23 days or 90 days.
- Plan of Correction
 - To avoid termination the hospital must submit a plan of correction.
 - The hospital may be monitored for 90 days.
 - The hospital needs to fully implement policy and procedural changes necessary to comply with the violation.

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- Failure to follow EMTALA rules can lead to:
 - Fines (which are not covered under malpractice insurance)
 - Maximum fine of \$119,942 per violation; \$59,973 for hospitals with <100 beds
 - Reports to other agencies such as the Office of Inspector General, Office of Civil Rights and Justice Department
 - Civil Liability
 - Patient or hospital harmed financially because of a transfer from the violating hospital
 - Hundreds of hospitals have been sued under EMTALA under Civil Liability
 - Some hospitals have had to pay more than \$3 million
 - Medicare Termination
 - Gross violations can lead to termination of Medicare funding

EMTALA

Conclusion

- Treat EVERY patient that comes to your facility to the best of your ability without regard to their ability to pay.
- Every patient presenting to any emergency department must have a medical screening examination.
- Every patient with an emergency medical condition must be stabilized and/or transferred.
- Before hospital transfer, a patient must be stabilized.
- EMTALA is enforced with hefty fines.