

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

## **What Physicians Need to Know**

**January 2017**

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**UPSTATE**  
UNIVERSITY HOSPITAL

# What is EMTALA?

- Emergency **M**edical **T**reatment & **A**ctive **L**abor **A**ct.
- Federally-mandated requirement [42 CFR § 489.24]. Known as the “Anti-Dumping Law”.
- 3 basic duties:
  1. Provide an appropriate Medical Screening Examination (MSE) on any person who *Comes to the Emergency Department* and requests examination or treatment; and
  2. If determined that an Emergency Medical Condition (EMC) exists, either stabilize the patient’s condition or provide an appropriate transfer; and
  3. For hospitals with specialized capabilities or facilities, accept transfers of patients in need of those specialized services if they have the capacity to treat them.

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## To Whom does EMTALA Apply?

- All Medicare-participating hospitals.
- Any physicians responsible for examination, treatment, or transfer of patient in an ED—including **on-call physicians**.

# When does EMTALA Apply?

When an individual “*Comes to the Emergency Department*”\*\* and requests care.

## \*\* “Prudent Layperson” Standard:

Where an individual’s appearance or behavior would cause a *prudent layperson* observer to believe that examination or treatment is needed

- Care must be provided regardless of ability to pay, insurance status, citizenship, race, disability, or any other protected status

# Where Does EMTALA Apply?

- **Dedicated Emergency Departments:**
  - Downtown Campus ED
  - Community Campus ED and L&D
- **Hospital Property**
  - Includes:
    - Entire Downtown Campus\*
    - Entire Community Campus\*

\* Including parking lots, sidewalks and driveways, and hospital departments or buildings within 250 yards of the hospital's main buildings.
  - Does not include:
    - Areas and facilities not part of the Hospital, such as private MD offices, nursing homes or other entities that participate separately under Medicare.
- **Ground or Air Ambulances** on hospital property for presentation at Emergency Department

## Other Hospital Locations

- Persons who seek emergency care at Hospital facilities that are not subject to EMTALA still must receive appropriate care as provided in Upstate policies and procedures.
- Examples:
  - Joslin Diabetes Center
  - Hematology Oncology Associates of Onondaga Hill

# Basic Requirements of EMTALA

A person who Comes to the Emergency Department seeking care for a medical condition must be provided a **Medical Screening Examination (MSE)**. The purpose of the MSE is to determine whether an **Emergency Medical Condition (EMC)** exists.

If hospital determines the person has an EMC, further examination and treatment must be provided until **stable**. If the hospital does not have the capability to treat the patient, the patient must be **transferred** in accordance with EMTALA.

- A hospital may not transfer an unstable patient except as permitted by specific guidelines of EMTALA.
- A hospital with specialized capabilities or facilities (burn units, neonatal intensive care units, trauma centers) may NOT refuse to accept a patient transfer if it has capacity to treat the patient.

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# Medical Screening Exam (MSE)...

- Is the process (examination and evaluation) required to reach the point where it can be determined whether an individual has an EMC or not.
- Must include all services (within the hospital's capabilities) that in ED/treating physician's judgment are necessary to screen and / or stabilize an EMC. These services include the use of on-call physicians when necessary.
- Must be performed by a "Qualified Medical Person" (QMP):
  - MD, DO, medical resident with hospital privileges.
  - Healthcare professional within the scope of their licensure and who are authorized by the board and bylaws and have hospital privileges to perform MSEs.
- MSE includes use of on-call physicians as needed.

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# Emergency Medical Condition (EMC)...

- Acute symptoms of such severity that lack of immediate medical attention could reasonably be expected to:
  - Place the person's health (or the health of their unborn child) in serious jeopardy, or
  - Cause serious impairment to bodily functions or serious dysfunction of any bodily organ or part.
- Examples:
  - Pregnancy with contractions
  - Severe pain
  - Psychiatric disturbance
  - Symptoms of substance abuse

# Actions after an MSE reveals an EMC exists

- Admit the patient to the hospital, or
- Stabilize the patient for discharge,
  - Ensure ability to obtain outpatient care.
  - Provide discharge instructions and summary of care provided.
- Or stabilize the patient for transfer.
  - Patient must be able to remain stabilized and not deteriorate.
  - Accepting facility must have a physician that accepts the transfer
  - EMTALA permits transfer of Unstabilized individuals only in limited circumstances

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# On-Call Physicians

- Hospitals are required to maintain a list of physicians who are on-call to respond, examine and treat patients with EMCs.
- EMTALA requirements for on-call physicians include:
  - Respond to the hospital when requested to attend to patients in a timely manner, and
  - Complete an MSE or provide stabilizing care unless circumstances beyond their control prevent a response.

# Appropriate Transfer

- Transferring Hospital (TH) treats individual within its capacity to minimize the risks to the health of individual/unborn child.
- Physician/QMP certifies they explained risks and benefits of the transfer to the person & the benefits expected from care at the Receiving Hospital (RH) outweigh risks of transfer. Patient or rep signs consent (or refusal is documented per policy).
- RH has available space & qualified personnel to treat the individual & accepts the transfer.
- TH sends RH all available medical records & test results related to the presenting EMC. Other records (e.g. test results not yet available) are sent as soon as practicable.
- Person is transferred using qualified personnel & transportation equipment as required, including use of necessary & medically appropriate life support measures during the transfer.

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# Transfer of Unstabilized Individuals

EMTALA permits transfer of an individual with an unstabilized EMC in only 2 instances:

1. The hospital does not have the capacity or capability to stabilize the individual, *and* the physician/QMP certifies that the benefits of the transfer outweigh the risks;  
or
2. The individual or person acting on the patient's behalf insists on transfer even after being informed of the hospital's obligations and the risks and benefits of the transfer.

# Receiving Hospital Obligations

- If a hospital has specialized capabilities or facilities, it must accept transfers of patients who need if the hospital has the capacity to treat them.
- At Upstate, all requests for emergency transfers are coordinated through the Upstate Transfer Center.

# Reports and Suspected Violations

- Example from EMTALA:
  - After initial exam, ED physician determines an individual requires services of on-call physician and notifies him/her.
  - The on-call fails/refuses to appear within a reasonable period of time.
  - ED physician orders transfer because without the on-call's services, benefits of transfer to another facility outweigh risks of transfer.
  - ED physician must include in the sending records the name and address of the on-call physician.
  - **Both the on-call physician and the hospital are exposed to potential penalties and liabilities.**
- All suspected violations must be immediately reported to the hospital.
  - Administration is responsible for investigating incidents and reporting any violations.
  - Failure to report may in itself be a violation

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# Penalties and Liabilities

## On-Call Physicians:

- \$50,000 per violation
- Termination from Medicare and Medicaid for gross and flagrant violations
- Fines/losses not covered by any insurance
- Public notice of violation
- Individual liability in civil lawsuits

## Hospital

- \$50,000 per violation
- Termination from Medicare and Medicaid for gross and flagrant violations
- Public notice of violation of law
- Fines/losses not covered by any insurance
- Public notice of violation



## Resources/Questions

- Upstate EMTALA and Transfer policies and forms are available on the Upstate Policy website.
- Upstate Transfer Center: 464-5449 or 1-866-464-5449
- Legal Department: 464-4700

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