

## Summary of CMS's Updated COVID-19 EMTALA Guidance (Mar 30, 2020)

CMS has issued updated [guidance](#) for hospitals and critical access hospitals (CAHs) regarding EMTALA obligations during this public health emergency. CMS has also issued a [limited blanket waiver of EMTALA](#) related to the medical screening exam (described below.) The majority of **existing EMTALA requirements remain in place**, including the requirement to provide stabilizing treatment to individuals found to have an emergency medical condition and for hospitals with capacity to accept patients in transfer.

The guidance provides information for ensuring that new workflows and processes implemented by hospitals to address COVID-19 guidance are compliant with EMTALA, including:

- **Alternative Locations for MSE On-Campus:**
  - Hospitals may set up alternative locations “on-campus” for individuals to receive a medical screening exam (MSE). Although not specified, in most instances these alternative sites will be for complaint specific purposes, e.g. COVID-19 symptoms. *Note: Under the EMTALA waiver (described below) redirection to an off-campus site for the MSE is also permissible, if done in accordance with the state’s emergency preparedness plan.*
  - Redirection to an alternative screening location can take place before the individual has entered the hospital or ED and logging can occur at either point of entry. Individuals do not need to present to the ED first, and even if they do, they may still be redirected to the on-campus alternative screening location for MSE.
  - Hospital personnel directing individuals from the ED to the alternative sites should be qualified (e.g. RN) to recognize those in need of immediate treatment in the ED (a triage function).
  - At non-ED hospital entrances, stationed non-clinical staff may provide redirection to the on-campus alternative screening location for individuals only seeking COVID-19 testing.
  - Alternative screening sites may be located in other buildings on the campus of a hospital or in tents in the parking lot, with certain restrictions.
- **Alternative Locations Off-campus:**
  - Communities may set up screening clinics and drive-through testing at sites not under the control of a hospital, and there is no EMTALA obligation at these sites.
  - Hospitals and community officials may encourage the public to go to alternative sites such as these instead of the hospital for screening.
  - But a hospital may not tell individuals who have already come to its ED to go to such off-campus locations until they have been provided a MSE and determined not to have an emergency medical condition. *Note: under the EMTALA waiver (described below) redirection to off-campus locations is permissible under prescribed circumstances.*
  - There should be protocols in place to deal with patients who arrive at off-site locations in medical distress and need transport to a hospital.

- **Signage:**
  - It is a violation of EMTALA for hospitals with EDs to post signs that create a (real or perceived) barrier to individuals seeking medical screening, including COVID-19.
  - However, use of signs that are designed to direct individuals to on-campus alternative locations for screening is allowable.
  - It is also acceptable for a hospital to post signs informing individuals about alternative off-site community locations (non-hospital controlled sites) if they are only seeking COVID-19 testing and do not want screening for a medical condition.
- **Complaints:**
  - If CMS receive EMTALA-related complaints, it will take into consideration CDC guidance and State or local public health direction at the time of the alleged noncompliance.
  - It will also take into consideration any clinical considerations specific to the individual case.
- **Telehealth:**
  - Hospitals may use telehealth equipment to provide an MSE by Qualified Medical Persons (QMP). The QMP may be on-campus (and using telehealth to self-contain) or offsite (due to staffing shortages). Either way, the QMP must be performing within the scope of their state practice and approved by the Hospital's Governing Body to perform MSEs (*except under an EMTALA waiver, as described below.*)
  - The use of telehealth to provide screening of individuals who have not physically presented to the hospital for treatment does not create an EMTALA liability.
  - In a separate action related to billing, CMS added ED E/M CPT codes 99281 to 99285, Critical Care CPT codes 99291-99292 and Observation Codes 99217-99220, 99224-99226 & 99234-99226 to approved Medicare telehealth services for the duration COVID-19 national emergency.

### EMTALA Waiver

- **Most of EMTALA remains in force, despite the waiver.**
- The EMTALA waiver is limited to the ability to refer individuals to an alternative *off-campus* medical screening site for the MSE, which must be in compliance with the State's Pandemic\Emergency Preparedness Plan. The off-campus site must be staffed with qualified personnel capable of medically screening patients who present with flu-like symptoms suggestive of Covid-19 infection.
- We are awaiting clarification from CMS, but the hospital most likely must also initiate its disaster plan before it can avail itself of the EMTALA waiver.
- **In general, regardless of a waiver, it is best to continue to follow all the usual EMTALA requirements, unless they somehow significantly impede patient care and are covered under the waiver.**