

Summary of CMS's March 9 COVID-19 EMTALA Guidance

CMS has issued [guidance](#) for hospitals and critical access hospitals (CAHs) on their EMTALA obligations when dealing with individuals with confirmed or suspected COVID-19 infections. **This is not a waiver of EMTALA**--the law sets a high threshold for issuing waivers such as issuance of a Presidential disaster declaration and a Secretary's declaration of a public health emergency. Therefore, **existing EMTALA requirements are still in place**, including the requirement to screen and stabilize every individual who presents, and to accept transfers from hospitals that lack necessary capabilities to do so.

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

- **Alternative Locations On-campus:**
 - Hospitals may now set up alternative screening sites "on-campus" rather than the ED to where individuals can be redirected after being logged in to receive a medical screening exam (MSE).
 - Logging in and redirection to the alternative screening site can take place before the individuals have even entered the hospital or ED.
 - Hospital personnel directing individuals to the alternative sites should be qualified (e.g., an RN) to recognize those in need of immediate treatment in the ED.
- **Alternative Locations Off-campus:**
 - Communities may set up screening clinics 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.
- **Signs:**
 - It is a violation of EMTALA for hospitals with EDs to use signs that create a (real or perceived) barrier to individuals who are suspected of having COVID-19 from coming to the ED.
 - However, use of signs that are designed to help direct individuals to various on-campus alternative locations for their MSE are allowable.
- **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.