Hospital Guidance for Meeting EMTALA Requirements in Light of COVID-19

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Edna McLain
Partner

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The Emergency Medical Treatment and Labor Act (EMTALA) ensures public access to emergency medical services regardless of ability to pay. EMTALA requires Medicare-participating hospitals with emergency departments (EDs) to, at a minimum:

- Provide a medical screening exam (MSE) to every individual who comes to the emergency department for examination or treatment for an emergency medical condition (EMC);

- Provide necessary stabilizing treatment for individuals with an EMC within the hospital's capability and capacity; and

- Provide for transfers when appropriate.

Because of COVID-19's ease of infection, however, concerns were raised about infected or potentially-infected patients flooding emergency departments and exposing other patients and health care workers to the virus unnecessarily. On March 9 and March 30, 2020, CMS issued written guidance to hospitals and critical access hospitals to identify steps that could be taken to comply with their EMTALA obligations during the COVID-19 crisis. Below are the highlights of the guidance from CMS:

Are hospitals required to provide an MSE for individuals with suspected or confirmed COVID-19?

Yes. Regardless of what EMC an individual has, any Medicare-participating hospital with an emergency department is required to provide an appropriate MSE. According to QSO-20-15, "[e]very ED is expected to have the capability to apply appropriate COVID-19 screening criteria when applicable, to immediately identify and isolate individuals who meet the screening criteria to be a potential COVID-19 patient and to contact their state or local public health officials to determine next steps when an individual meeting the screening criteria is found."

Can hospitals send COVID-19 patients to other screening sites?

Yes. An ED may direct patients with suspected COVID-19 to an on-campus alternate testing site or to an off-campus testing site.

Signage *can* be used to direct individuals to various locations on the hospital property for an MSE or to direct individuals who do not have an EMC and who may not want an MSE to alternative community locations for COVID-19 testing. However, hospitals *cannot* use signage to divert individuals with suspected or confirmed COVID-19 from coming to the hospital or to refuse to provide an MSE to anyone who comes to the emergency department.

What does EMTALA require for direction to an on-campus screening site?

If an individual comes to the ED first, qualified personnel like a registered nurse must be able to recognize whether immediate treatment in the ED is needed or not. If immediate treatment is not needed, that qualified personnel may direct the individual to the on-campus screening site, but the patient should be logged in the ED or in the area of the hospital where he/she presented initially. Non-clinical hospital staff stationed in other areas of the hospital besides the ED may direct individuals to those on-campus screening sites.

At the on-campus site, an MSE must be done by a qualified medical provider, which may include physicians, nurse practitioners, physician assistants, or RNs trained to perform MSEs and acting within the scope of their State's Practice Act. The hospital must provide stabilizing treatment or an appropriate transfer to anyone found to have an EMC.

What does EMTALA require for direction to an off-campus screening site?

The requirements differ between off-campus sites controlled by the hospital and those that are community-based. Ordinarily, a hospital cannot divert individuals who have come to the ED to an off-site hospital location, but according to QSO-20-15, "CMS has approved via 1135 waiver for the COVID-19 pandemic the ability to re-direct patients to an offsite location for screening, in accordance with a state emergency preparedness plan." EMTALA requirements do not apply to these off-campus sites unless they are a dedicated ED of the hospital under 42 CFR 489.24(b). It should be made clear that the off-campus location is a screening center and not a location to provide treatment for any and all EMCs. However, these off-campus sites should be staffed with medical personnel qualified to evaluate respiratory or presumed COVID-19 symptoms. A hospital is required to provide for referral or transfer to an appropriate facility, and prior coordination with local emergency medical services is advised.

For community-based screening sites that are **not hospital-controlled**, there are no EMTALA obligations at these sites even if hospital personnel are present to assist with testing. While hospitals may encourage individuals to go to these sites for COVID-19 testing, a hospital may not tell an individual who has come to the

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ED first to go to community-based sites until they have been provided an MSE and have been determined not to have an EMC.

Are hospitals required to accept transfers of patients with suspected or confirmed COVID-19?

It depends. If a hospital has *capacity* and the *specialized capabilities* needed for stabilizing treatment, the hospital is required to accept appropriate transfers. However, if the receiving hospital does not have capacity to provide the necessary care and services, it may refuse the transfer. CMS will evaluate the capabilities and capacity of both the referring and receiving hospital in order to determine whether a violation has occurred. CMS has specifically stated that the presence or absence of negative pressure rooms is not the sole determining factor "when in most cases all that is required for appropriate care is a private room."

Additionally, regardless of whether the hospital has an ED, all Medicare-participating hospitals with specialized capabilities and capacity to treat are required to accept appropriate transfers.

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