

department. These additional logs must be available in a timely manner for surveyor review. The hospital may also keep its central log in an electronic format.

Review the dedicated emergency department log covering at least a six month period that contains information on all individuals coming to the emergency department and check for completeness, gaps in entries or missing information.

§489.24 Special responsibilities of Medicare hospitals in emergency cases.

The provisions of this regulation apply to all hospitals that participate in Medicare and provide emergency services.

Hospitals with a dedicated emergency department are required under EMTALA to do the following:

- to provide an appropriate MSE to any individual who comes to the dedicated emergency department;
- provide necessary stabilizing treatment to an individual with an EMC or an individual in labor;
- provide for an appropriate transfer of the individual if either the individual requests the transfer or the hospital does not have the capability or capacity to provide the treatment necessary to stabilize the EMC (or the capability or capacity to admit the individual);
- not delay examination and/or treatment in order to inquire about the individual's insurance or payment status;
- accept appropriate transfers of individuals with emergency medical conditions if the hospital has the specialized capabilities not available at the transferring hospital and has the capacity to treat those individuals,
- obtain or attempt to obtain written and informed refusal of examination, treatment or an appropriate transfer in the case of an individual who refuses examination, treatment or transfer; and
- not take adverse action against a physician or qualified medical personnel who refuses to transfer an individual with an emergency medical condition, or against an employee who reports a violation of these requirements.

Tag 406

§489.24(a)

(a) Applicability of provisions of this section.

(1) In the case of a hospital that has an emergency department, if an individual (whether or not eligible for Medicare benefits and regardless of ability to pay)

“comes to the emergency department”, as defined in paragraph (b) of this section, the hospital must--

(i) Provide an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists. The examination must be conducted by an individual(s) who is determined qualified by hospital bylaws or rules and regulations and who meets the requirements of §482.55 of this chapter concerning emergency services personnel and direction; and

Interpretive Guidelines §489.24(a)

A “hospital with an emergency department” is defined in §489.24(b) as a hospital with a dedicated emergency department. An EMTALA obligation is triggered for such a hospital when an individual comes by him or herself, with another person, to a hospital's **dedicated emergency department** (as that term is defined above) and a request is made by the individual or on the individual's behalf, or a prudent layperson observer would conclude from the individual's appearance or behavior a need, for examination or treatment of a **medical condition**. In such a case, the hospital has incurred an obligation to provide an appropriate medical screening examination for the individual and stabilizing treatment or an appropriate transfer. The purpose of the medical screening examination is to determine whether or not an emergency medical condition exists.

If an individual who is not a hospital patient comes elsewhere on **hospital property** (that is, the individual comes to the hospital but not to the dedicated emergency department), an EMTALA obligation on the part of the hospital may be triggered if either the individual requests examination or treatment for an **emergency** medical condition or if a prudent layperson observer would believe that the individual is suffering from an **emergency** medical condition. The term “hospital property” means the entire main hospital campus as defined in § 413.65(a), including the parking lot, sidewalk and driveway or hospital departments, including any building owned by the hospital that are within 250 yards of the hospital.

If an individual is registered as an outpatient of the hospital and they present on hospital property but not to a dedicated emergency department, the hospital does not incur an EMTALA obligation with respect to that individual if they have begun to receive a scheduled course of outpatient care. Such an individual is protected by the hospital conditions of participation that protect patient's health and safety and to ensure that quality care is furnished to all patients in Medicare-participating hospital. If such an individual experiences an EMC while receiving outpatient care, the hospital does not have an obligation to conduct an MSE for that patient. As discussed in greater detail below, such a patient has adequate protections under the Medicare COPs and state law.

If an individual is initially screened in a department or facility on-campus outside of the ED, the individual could be moved to another hospital department or facility on-campus to receive further screening or stabilizing treatment without such movement being

regarded as a transfer, as long as (1) all persons with the same medical condition are moved in such circumstances, regardless of their ability to pay for treatment; (2) there is bona fide medical reason to move the individual; and (3) appropriate medical personnel accompany the individual. The same is also true for an individual who presents to the dedicated emergency department (e.g., patient with an eye injury in need of stationary ophthalmology equipment located in the eye clinic) and must be moved to another hospital-owned facility or department on-campus for further screening or stabilizing treatment. The movement of the individual between hospital departments is not considered an EMTALA transfer under this section, since the individual is simply being moved from one department of a hospital to another department or facility of the same hospital.

Hospitals should not move individuals to off-campus facilities or departments (such as an urgent care center or satellite clinic) for a MSE. If a individual comes to a hospital-owned facility or department, which is off-campus and operates under the hospital's Medicare provider number, §1867 (42 C.F.R. § 489.24) will not apply to that facility and/or department unless it meets the definition of a dedicated emergency department.

If, however, such a facility does meet the definition of a dedicated ED, it must screen and stabilize the patient to the best of its ability or execute an appropriate transfer if necessary to another hospital or to the hospital on whose Medicare provider number it is operated. Hospital resources and staff available at the main campus are likewise available to individuals seeking care at the off campus facilities or departments within the capability of the hospital. Movement of the individual to the main campus of the hospital is not considered a transfer since the individual is simply being moved from one department of a hospital to another department or facility of the same hospital. In addition, a transfer from such an entity (i.e., an off-campus facility that meets the definition of a dedicated ED) to a nonaffiliated hospital (i.e., a hospital that does not own the off-campus facility) is allowed where the facility at which the individual presented cannot stabilize the individual and the benefits of transfer exceed the risks of transfer. In other words, there is no requirement under EMTALA that the individual be always transferred back to the hospital that owns and operates the off-campus dedicated ED. Rather, the requirement of EMTALA is that the individual be transferred to an appropriate facility for treatment.

If a request were made for emergency care in a hospital department off the hospital's main campus that does not meet the definition of a dedicated emergency department, EMTALA would not apply. However, such an off-campus facility must have policies and procedures in place as how to handle patients in need of immediate care. For example, the off-campus facility policy may direct the staff to contact the emergency medical services/911 (EMS) to take the patient to an emergency department (not necessarily the emergency department of the hospital that operates the off-campus department, but rather the closest emergency department) or provide the necessary care if it is within the hospital's capability. Therefore, a hospital off-campus facility that does not meet the definition of a dedicated emergency department does not have an EMTALA obligation and not required to be staffed to handle potential EMC.

Medicare **hospitals** that do not provide emergency services must meet the standard of §482.12 (f), which requires hospitals to have written policies and procedures for the appraisal of emergencies, initial treatment within its capability and capacity, and makes an appropriate referral to a hospital that is capable of providing the necessary emergency services.

If a hospital has an EMTALA obligation, it must screen individuals to determine if an EMC exists. It is not appropriate to merely “log in” an individual and not provide a MSE. Individuals coming to the emergency department must be provided a MSE beyond initial triaging. Triaging is not equivalent to a medical screening examination. Triage merely determines the “order” in which individuals will be seen, not the presence or absence of an emergency medical condition.

A MSE is the process required to reach with reasonable clinical confidence, the point at which it can be determined whether a medical emergency does or does not exist. If a hospital applies in a nondiscriminatory manner (i.e., a different level of care must not exist based on payment status, race, national origin) a screening process that is reasonably calculated to determine whether an EMC exists, it has met its obligations under the EMTALA.

Depending on the individual's presenting symptoms, the MSE represents a spectrum ranging from a simple process involving only a brief history and physical examination to a complex process that also involves performing ancillary studies and procedures such as (but not limited to) lumbar punctures, clinical laboratory tests, CT scans, and/or diagnostic tests and procedures.

A MSE is not an isolated event. It is an ongoing process. The record must reflect continued monitoring according to the patient's needs until he/she is stabilized, admitted or appropriately transferred. There should be evidence of this evaluation prior to discharge or transfer.

The MSE must be the same MSE that the hospital would perform on any individual coming to the hospital's dedicated emergency department with those signs and symptoms, regardless of the individual's ability to pay for medical care. If the MSE is appropriate and does not reveal an EMC, the hospital has no further obligation under 42 C.F.R. §489.24.

Regardless of a positive or negative individual outcome, a hospital would be in violation of the anti-dumping statute if it fails to meet any of the medical screening requirements under 42 C.F.R. § 489.24. The clinical outcome of an individual's condition is not a proper basis for determining whether an appropriate screening was provided or whether a person transferred was stable. However, the outcome may be a “red flag” indicating that a more thorough investigation is needed. Do not make decisions base on clinical information that was not available at the time of stabilizing or transfer. If an individual

was misdiagnosed, but the hospital utilized all of its resources, a violation of the screening requirement did not occur.

It is not impermissible under EMTALA for a hospital to follow normal registration procedures for individuals who come to the emergency department. For example, a hospital may ask the individual for an insurance card, so long as doing so does not delay the medical screening examination. In addition, the hospital may seek other information (not payment) from the individual's health plan about the individual such as medical history. And, in the case of an individual with an emergency medical condition, once the hospital has conducted the medical screening examination and has initiated stabilizing treatment, it may seek authorization for all services from the plan, again, as long as doing so does not delay the implementation of the required MSE and stabilizing treatment.

A hospital that is not in a managed care plan's network of designated providers cannot refuse to screen and treat (or appropriately transfer, if the medical benefits of the transfer outweigh the risks or if the individual requests the transfer) individuals who are enrolled in the plan who come to the hospital if that hospital participates in the Medicare program.

Once an individual has presented to the hospital seeking emergency care, the determination of whether an EMC exists is made by the examining physician(s) or other qualified medical person actually caring for the patient at the treating facility.

Medicare participating hospitals that provide emergency services must provide a medical screening examination to any individual regardless of diagnosis (e.g., labor, AIDS), financial status (e.g., uninsured, Medicaid), race, and color, national origin (e.g. Hispanic or Native American surnames), and/or disability, etc.

A hospital, regardless of size or patient mix, must provide screening and stabilizing treatment within the scope of its abilities, as needed, to the individuals with emergency medical conditions who come to the hospital for examination and treatment.

A minor (child) can request an examination or treatment for an EMC. The hospital is required by law to conduct the examination if requested by an individual or on the individual's behalf to determine if an EMC exists. Hospital personnel should not delay the MSE by waiting for parental consent. If after screening the minor, it is determined that no EMC is present, the staff can wait for parental consent before proceeding with further examination and treatment.

On-campus provider-based entities (such as rural health clinics or physician offices) are not subject to EMTALA, therefore it would be inappropriate to move individuals to these facilities for a MSE or stabilizing treatment under this Act.

If an individual is not on hospital property (which includes a hospital owned and operated ambulance), this regulation is not applicable. Hospital property includes ambulances owned and operated by the hospital, even if the ambulance is not on the hospital campus. An individual in a non-hospital owned ambulance, which is on hospital property is considered to have come to the hospital's emergency department. An individual in a

non-hospital owned ambulance not on the hospital's property is not considered to have come to the hospital's emergency department when the ambulance personnel contact "Hospital A" by telephone or telemetry communications. If an individual is in an ambulance, regardless of whether the ambulance is owned by the hospital, a hospital may divert individuals when it is in "diversionary" status because it does not have the staff or facilities to accept any additional emergency patients at that time. However, if the ambulance is owned by the hospital, the diversion of the ambulance is only appropriate if the hospital is being diverted pursuant to community-wide EMS protocols. Moreover, if any ambulance (regardless of whether or not owned by the hospital) disregards the hospital's instructions and brings the individual on to hospital campus, the individual has come to the hospital and the hospital has incurred an obligation to conduct a medical screening examination for the individual.

Should a hospital, which is not in diversionary status fail, to accept a telephone or radio request for transfer or admission, the refusal could represent a violation of other Federal or State requirements (e.g., Hill-Burton). If you suspect a violation of related laws, refer the case to the responsible agency for investigation.

The following two circumstances will not trigger EMTALA:

- The use of a hospital's helipad by local ambulance services or other hospitals for the transport of individuals to tertiary hospitals located throughout the State does not trigger an EMTALA obligation for the hospital that has the helipad on its property when the helipad is being used for the purpose of transit as long as the sending hospital conducted the MSE prior to transporting the individual to the helipad for medical helicopter transport to a designated recipient hospital. The sending hospital is responsible for conducting the MSE prior to transfer to determine if an EMC exists and implementing stabilizing treatment or conducting an appropriate transfer. Therefore, if the helipad serves simply as a point of transit for individuals who have received a MSE performed prior to transfer to the helipad, the hospital with the helipad is not obligated to perform another MSE prior to the individual's continued travel to the recipient hospital. If, however, while at the helipad, the individual's condition deteriorates, the hospital at which the helipad is located must provide another MSE and stabilizing treatment within its capacity if requested by medical personnel accompanying the individual.
- If as part of the EMS protocol, EMS activates helicopter evacuation of an individual with a potential EMC, the hospital that has the helipad does not have an EMTALA obligation if they are not the recipient hospital, **unless a request** is made by EMS personnel, the individual or a legally responsible person acting on the individual's behalf for the examination or treatment of an EMC.

Hospitals are not relieved of their EMTALA obligation to screen, provide stabilizing treatment and or an appropriate transfer to individuals because of prearranged community or State plans that have designated specific hospitals to care for selected individuals (e.g., Medicaid patients, psychiatric patients, pregnant women). Hospitals located in those States which have State/local laws that require particular individuals, such as psychiatric

or indigent individuals, to be evaluated and treated at designated facilities/hospitals may violate EMTALA if the hospital disregards the EMTALA requirements and does not conduct an MSE and provide stabilizing treatment or conduct an appropriate transfer prior to referring the individual to the State/local facility. If, after conducting the MSE and ruling out an EMC (or after stabilizing the EMC) the sending hospital needs to transfer an individual to another hospital for treatment, it may elect to transfer the individual to the hospital so designated by these State or local laws. Hospitals are also prohibited from discharging individuals who have not been screened or who have an emergency medical condition to non-hospital facilities for purposes of compliance with State law. The existence of a State law requiring transfer of certain individuals to certain facilities is not a defense to an EMTALA violation for failure to provide an MSE or failure to stabilize an EMC therefore hospitals must meet the federal EMTALA requirements or risk violating EMTALA.

However, in the event of a national emergency or crisis (e.g. bioterrorism) State or local governments may develop community response plans that designate specific entities (hospitals, public health facilities, etc.) with the responsibility of handling certain categories of patients during these catastrophic events. Hospitals in the area of the national emergency would still be responsible for providing a MSE to all individuals who requested examination or treatment for a medical condition or an EMC, but the transfer or referral of these individuals in accordance with such a community plan would not result in sanctions against the hospital under EMTALA. For example: An individual who has been potentially exposed to a toxin presents at a hospital that has not been designated, pursuant to a State or local EMS plan, as a hospital where patients exposed to toxins should go. After questioning the individual and making a determination that the individual falls into the category for which the community has a specified screening site, the individual may be referred to the designated community facility without risking sanctions under EMTALA.

If a screening examination reveals an EMC and the individual is told to wait for treatment, but the individual leaves the hospital, the hospital did not "dump" the individual unless:

- The individual left the emergency department based on a "suggestion" by the hospital,
- The individual's condition was an emergency, but the hospital was operating beyond its capacity and did not attempt to transfer the individual to another facility, or

If an individual leaves a hospital Against Medical Advice (AMA) or LWBS, on his or her own free will (no coercion or suggestion) the hospital is not in violation of EMTALA.

Hospital resources and staff available to inpatients at the hospital for emergency services must likewise be available to individuals coming to the hospital for examination and

treatment of an EMC because these resources are within the capability of the hospital. For example, a woman in labor who presents at a hospital providing obstetrical services must be treated with the resources available whether or not the hospital normally provides unassigned emergency obstetrical services.

The MSE must be conducted by an individual(s) who is determined qualified by hospital by-laws or rules and regulations and who meets the requirements of §482.55 concerning emergency services personnel and direction. The designation of the qualified medical personnel (QMP) should be set forth in a document approved by the governing body of the hospital. If the rules and regulations of the hospital are approved by the board of trustees or other governing body, those personnel qualified to perform the medical screening examinations may be set forth in the rules and regulations, or the hospital by-laws. It is not acceptable for the hospital to allow informal personnel appointments that could frequently change.

If a QMP other than the physician (Registered Nurse, Physician Assistant, etc.) determines a woman is in false labor; a physician must certify the diagnosis. How the physician certifies (telephone consultation, or actually examines the patient) the diagnosis of false labor is determined by the hospital and its medical staff. The hospital should have policies and procedures in place providing guidance to their QMP on how to meet this requirement. If telephone consultation is the means utilized to satisfy this requirement, documentation within the patient charts must be in accordance with the hospital CoP at 42 CFR §482.24(c)(1).

(ii) If an emergency medical condition is determined to exist, provide any necessary stabilizing treatment, as defined in paragraph (d) of this section, or an appropriate transfer as defined in paragraph (e) of this section. If the hospital admits the individual as an inpatient for further treatment, the hospital's obligation under this section ends, as specified in paragraph (d)(2) of this section.

Interpretive Guideline § 489.24(a)(1)(ii)

Refer to Tag A407 for stabilizing treatment and inpatients and Tag A409 for an appropriate transfer for EMTALA.

EMTALA does not apply to hospital inpatients. The existing hospital COPs protect individuals who are already patients of a hospital and who experience an EMC. Hospitals that fail to provide treatment to these patients may be subject to further enforcement actions.

If the surveyor discovers during the investigation that a hospital did not admit an individual in good faith with the intention of providing treatment (i.e., the hospital used the inpatient admission as a means to avoid EMTALA requirements), then the hospital is considered liable under EMTALA and actions may be pursued.

(2) **Nonapplicability of provisions of this section.** Sanctions under this section for inappropriate transfer during a national emergency do not apply to a hospital with a dedicated emergency department located in an emergency area, as specified in section 1135(g)(1) of the Act.

Interpretive Guidelines §489.24 (a)(2)

CMS will issue guidelines as appropriate in the event of a national emergency and its impact upon the EMTALA regulations.

(c) Use of dedicated emergency department for nonemergency services. If an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition.

Interpretive Guidelines §489.24(c)

Any individual with a medical condition that presents to a hospital's ED must receive an MSE that is appropriate for their medical condition. The objective of the MSE is to determine whether or not an emergency medical condition exists. This does not mean, that all EMTALA screenings must be equally extensive. If the nature of the individual's request makes clear that the medical condition is not of an emergency nature, the MSE is reflective of the individual presenting complaints or symptoms. A hospital may, if it chooses, have protocols that permit a QMP (e.g., registered nurse) to conduct specific MSE(s) if the nature of the individual's request for examination and treatment is within the scope of practice of the QMP (e.g., a request for a blood pressure check and that check reveals that the patient's blood pressure is within normal range). Once the individual is screened and it is determined the individual has only presented to the ED for a non-emergency purpose, the hospital's EMTALA obligation ends for that individual at the completion of the MSE. Hospitals are not obligated under EMTALA to provide screening services beyond those needed to determine that there is no EMC.

For a hospital to be exempted from its EMTALA obligations to screen individuals presenting at its emergency department for non-emergency tests (e.g., individual has consulted with physician by telephone and the physician refers the individual to a hospital emergency department for a non-emergency test) the hospital must be able to document that it is only being asked to collect evidence, not analyze the test results, or to otherwise examine or treat the individual. Furthermore, a hospital may be exempted from its EMTALA obligations to screen individuals presenting to its dedicated emergency department if the individual had a previously scheduled appointment.

If an individual presents to an ED and requests pharmaceutical services (medication) for a medical condition, the hospital generally would have an EMTALA obligation.

Surveyors are encouraged to ask probing questions of the hospital staff to determine if the hospital in fact had an EMTALA obligation in this situation (e.g., did the individual present to the ED with an EMC and informed staff they had not taken their medication? Was it obvious from the nature of the medication requested that it was likely that the patient had an EMC?). The circumstances surrounding why the request is being made would confirm if the hospital in fact has an EMTALA obligation. If the individual requires the medication to resolve or provide stabilizing treatment of an EMC, then the hospital has an EMTALA obligation. Hospitals are not required by EMTALA to provide medication to individuals who do not have an EMC simply because the individual is unable to pay or does not wish to purchase the medication from a retail pharmacy or did not plan appropriately to secure prescription refills.

If an individual presents to a dedicated emergency department and requests services that are not for a medical condition, such as preventive care services (immunizations, allergy shots, flu shots) or the gathering of evidence for criminal law cases (e.g., sexual assault, blood alcohol test), the hospital is not obligated to provide a MSE under EMTALA to this individual.

Attention to detail concerning blood alcohol testing (BAT) in the ED is instrumental when determining if a MSE is to be conducted. If an individual is brought to the ED and law enforcement personnel request that emergency department personnel draw blood for a **BAT only** and does not request examination or treatment for a medical condition, such as intoxication and a prudent lay person observer would not believe that the individual needed such examination or treatment, then the EMTALA's screening requirement is not applicable to this situation because the only request made on behalf of the individual was for evidence. However, if for example, the individual in police custody was involved in a motor vehicle accident or may have sustained injury to him or herself and presents to the ED a MSE would be warranted to determine if an EMC exists.

When law enforcement officials request hospital emergency personnel to provide clearance for incarceration, the hospital has an EMTALA obligation to provide a MSE to determine if an EMC exists. If no EMC is present, the hospital has met its EMTALA obligation and no further actions are necessary for EMTALA compliance.

Surveyors will evaluate each case on its own merit when determining a hospital's EMTALA obligation when law enforcement officials request screening or BAT for use as evidence in criminal proceedings.

This principle also applies to sexual assault cases.

Tag 407

§489.24(d)

(d) Necessary stabilizing treatment for emergency medical conditions.—

(1) **General.** Subject to the provisions of paragraph (d)(2) of this section, if any individual (whether or not eligible for Medicare benefits) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either--

- (i) Within the capabilities of the staff and facilities available at the hospital, for further medical examination and treatment as required to stabilize the medical condition.

Interpretive Guidelines §489.24(d)(1)(i)

A hospital is obligated to provide the services specified in the statute and this regulation regardless of whether a hospital will be paid. After the medical screening has been implemented and the hospital has determined that an emergency medical condition exists, the hospital must provide stabilizing treatment within its capability and capacity.

Capabilities of a medical facility mean that there is physical space, equipment, supplies, and specialized services that the hospital provides (e.g., surgery, psychiatry, obstetrics, intensive care, pediatrics, trauma care).

Capabilities of the staff of a facility means the level of care that the personnel of the hospital can provide within the training and scope of their professional licenses. This includes coverage available through the hospitals on call roster.

The capacity to render care is not reflected simply by the number of persons occupying a specialized unit, the number of staff on duty, or the amount of equipment on the hospital's premises. Capacity includes whatever a hospital customarily does to accommodate patients in excess of its occupancy limits §489.24 (b). If a hospital has customarily accommodated patients in excess of its occupancy limits by whatever means (e.g., moving patients to other units, calling in additional staff, borrowing equipment from other facilities) it has, in fact, demonstrated the ability to provide services to patients in excess of its occupancy limits.

A hospital may appropriately transfer (see Tag A 409) an individual before the sending hospital has used and exhausted all of its resources available if the individual requests the transfer to another hospital for his or her treatment and refuses treatment at the sending hospital.

To comply with the MSE and stabilization requirements of §1867 all individuals with similar medical conditions are to be treated consistently. Compliance with local, State, or regionally approved EMS transport of individuals with an emergency is usually deemed to indicate compliance with §1867; however a copy of the protocol should be obtained and reviewed at the time of the survey.

If community wide plans exist for specific hospitals to treat certain EMCs (e.g., psychiatric, trauma, physical or sexual abuse), the hospital must meet its EMTALA obligations (screen, stabilize, and or appropriately transfer) prior to transferring the