



EMTALA and Physician Assistants

EMTALA is the "Emergency Medical Treatment and Labor Act," a law that took effect in 1986 intended to ensure that all individuals have access to emergency care and that they are not inappropriately transferred to another facility. The regulations for EMTALA fall under the Centers for Medicare and Medicaid Services (CMS).

The law requires that hospitals provide an appropriate medical screening examination (MSE) to any individual who comes to the facility requesting emergency care.

The purpose of the MSE is to determine whether an emergency medical condition exists.

If the clinical staff determines that an emergency medical condition exists, they must either provide the treatment necessary to stabilize the individual or, if the facility and staff are unable to provide the care needed, the individual may be transferred. The law includes specific criteria that must be met regarding transfers.

EMTALA affects PA (physician assistant) practice specifically in four areas:

- Medical Screening Exam
- Certifying False Labor
- Emergency Call
- Transferring patients

Medical Screening Exam

Summary: The EMTALA law and regulations allow PAs to conduct MSEs. A hospital's written policies must specify that PAs are among the providers qualified to conduct them. Individual PAs must have privileges to perform the exams.

EMTALA regulations state:

"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 provide an appropriate medical screening examination (MSE) 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 ..." [\[42 CFR §489.24\(a\)\(1\)\(i\)\]](#)

CMS Guidance/Interpretation

The CMS State Operations Manual (SOM) (also called "interpretive guidelines") is written by CMS national staff to guide surveyors who are inspecting hospitals for Medicare and Medicaid participation. The public can access the guidelines online. The EMTALA guidelines are found in [SOM Appendix V](#).

The interpretive guidelines state, "The MSE 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](#) 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 bylaws." [SOM Appendix V, page 41.](#)

Certifying False Labor

Summary: PAs can certify false labor if they are acting within their scope of practice as defined by the hospital and their individual privileges.

EMTALA regulations state:

"Labor means the process of childbirth beginning with the latent or early phase of labor and continuing through the delivery of the placenta. A woman experiencing contractions is in true labor unless a physician, certified nurse-midwife, or other qualified medical person acting within his or her scope of practice as defined in hospital medical staff bylaws and State law, certifies that, after a reasonable time of observation, the woman is in false labor." [42 CFR §489.24\(b\) Definitions](#)

CMS Guidance/Interpretation

CMS guidance to surveyors quotes the regulation and provides no additional interpretation. [SOM Appendix V, page 37.](#)

Emergency Department Call

Summary: PAs can provide "further assessment or stabilizing treatment" in an emergency department under EMTALA. The guidelines indicate that the on-call physician must determine, based on the condition of the patient and the resources available (including the capabilities of the PA) whether to direct the PA to provide the care for the patient in the emergency department.

EMTALA regulations state:

The hospital agrees to provide "an on-call list of physicians who are on the hospital's medical staff or who have privileges at the hospital, or who are on staff or have privileges at another hospital participating in a formal community call plan, in accordance with §489.24(j)(2)(iii), available to provide treatment necessary after the initial examination to stabilize individuals with emergency medical conditions who are receiving services under §489.24 in accordance with the resources available to the hospital;" [§489.20\(r\)\(2\)](#)

Section 489.24(j) – Availability of on-call Physicians – requires the hospital to have written policies and procedures in place to address how it will respond when a particular specialty is not available or the on-call physician cannot respond, how it will meet on-call needs if physicians schedule elective surgery during their on-call hours, if physicians have simultaneous on-call duties, or participate in a formal community call plan. [§489.24\(j\)](#)

CMS Guidance/Interpretation Regarding PAs and Call

In its guidance about on-call duties, CMS provides some specifics about PAs taking call:

"If it is permitted under the hospital's policies, an on-call physician has the option of sending a representative, i.e., directing a licensed non-physician practitioner as his or her representative to appear at the hospital and provide further assessment or stabilizing treatment to an individual. This determination should be based on the individual's medical need and the capabilities of the hospital and the applicable State scope of practice laws, hospital by-laws and rules and regulations. There are some circumstances in which the non-physician practitioner can provide the specialty treatment more expeditiously than the physician on-call. It is important to note, however, that the designated on-call physician is ultimately responsible for providing the necessary services to the individual in the DED, regardless of who makes the in-person appearance. Furthermore, in the event that the treating physician disagrees with the on-call physician's decision to send a representative and requests the actual appearance of the on-call physician, then the on-call physician is required under EMTALA to appear in person. Both the hospital and the on-call physician who fails or refuses to appear in a reasonable period of time may be subject to sanctions for violation of the EMTALA statutory requirements." [SOM Appendix V, page 31.](#)

CMS also provides extensive guidance about the on-call list and scenarios of possible on-call coverage plans. [SOM Appendix V, pages 25-32.](#)

Transferring Patients

Summary: The EMTALA regulations allow “qualified medical personnel” other than physicians to sign a certification of transfer of emergency patients. If a PA certifies transfer of an unstable patient to another emergency department, the law requires the PA to consult with a physician prior to transfer and that the physician co-sign the order within a timeframe specified in hospital policy.

EMTALA regulations state:

“If an individual at a hospital has an emergency medical condition that has not been stabilized (as defined in paragraph (b) of this section), the hospital may not transfer the individual unless—

“(B) A physician (within the meaning of section 1861(r)(1) of the Act) has signed a certification that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual or, in the case of a woman in labor, to the woman or the unborn child, from being transferred. The certification must contain a summary of the risks and benefits upon which it is based; [CFR Title 42, Section 489.24\(e\)\(ii\)\(B\)](#)

“(C) If a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as determined by the hospital in its bylaws or rules and regulations) has signed a certification described in paragraph (e)(1)(ii)(B) of this section after a physician (as defined in section 1861(r)(1) of the Act) in consultation with the qualified medical person, agrees with the certification and subsequently countersigns the certification. The certification must contain a summary of the risks and benefits upon which it is based.” [CFR Title 42, Section 489.24\(e\)\(ii\)\(C\)](#)

CMS Guidance/Interpretation

CMS interpretive guidelines state:

“Section 1861(r)(i) of the Act defines physicians as: A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action. (This provision is not to be construed to limit the authority of a doctor of medicine or osteopathy to delegate tasks to other qualified **health care personnel** to the extent recognized under State law or a State’s regulatory mechanism).” [SOM Appendix V, page 61.](#)

“Regardless of practices within a State, a woman in labor may be transferred only if she or her representative requests the transfer or if a physician or other qualified medical personnel signs a certification that the benefits outweigh the risks. If the hospital does not provide obstetrical services, the benefits of a transfer may outweigh the risks. A hospital cannot cite State law or practice as the basis for transfer.” [SOM Appendix V, page 61.](#)

“Under certain circumstances qualified medical personnel other than a physician may sign the certification. A qualified medical person (QMP) may sign the certification of benefits versus risks of a transfer only after consultation with a physician who agrees with the transfer. The physician must subsequently countersign the certification. The physician’s countersignature must be obtained within the established timeframe according to hospital policies and procedures. Hospital by-laws or rules or regulations must specify the criteria and process for granting medical staff privileges to QMPs, and, in accordance with the hospital or CAH Conditions of Participation, each individual QMP must be appropriately privileged.” [SOM Appendix V, page 60.](#)

References

United States Code at Title 42 USC §1867, Chapter 7 (Social Security), Subchapter XVIII (Health Insurance for the Aged and Disabled), Part E (Miscellaneous Provisions), [Sec.1395cc](#), Medicare Provider Agreements, and [Sec.1395dd](#), Examination and treatment for emergency medical conditions and women in labor.

Code of Federal Regulations, Title 42, §489.20, [Provider Agreements: Basic Commitments](#) and §489.24, et seq., [EMTALA on-call responsibilities](#)

[CMS State Operations Manual, Interpretive Guidelines, Appendix A, Conditions of Participation for Hospitals](#)

[CMS State Operations Manual, Interpretive Guidelines, Appendix V, Responsibilities of Medicare Participating Hospitals in Emergency Cases \(EMATLA\)](#)

Additional Resources

Federal Department of Health and Human Services

[EMTALA site](#)

American College of Emergency Physicians

[EMTALA Fact Sheet](#)

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