

## CMS EMTALA Guidance

On March 9, CMS updated its EMTALA [guidance](#) in response to concerns related to COVID-19.

This guidance is comprehensive and addresses several issues, including obligations to screen and stabilize or transfer individuals, recommended screening factors, the use of alternate screening sites, enforcement standards, and concerns related to lack of PPE, among other issues. CMS's guidance also includes a fact sheet and Q&A document.

Hospitals subject to EMTALA *must* conduct an appropriate medical screening examination (MSE) of *all individuals who come to the emergency department* (ED), including individuals who are suspected of having COVID-19, and must apply appropriate COVID-19 screening criteria when applicable, immediately identify and isolate individuals who meet such screening criteria, and contact state or local public health officials to determine next steps. Hospitals should consult [CDC guidance](#) and local and state guidance.

*Hospitals may not refuse to allow individuals with suspected cases of COVID-19 into their ED and may not decline to perform an MSE on an individual with potential or suspected COVID-19 due to a lack of PPE or specialized equipment/facilities.* General EMTALA obligations continue to apply, including those regarding specialized capabilities, transfers, and diversionary status. However, based on CMS' guidance:

- Hospitals and providers have discretion to determine what constitutes an appropriate medical screening exam, as the content of the MSE may vary according to the individual's presenting signs and symptoms and can be as simple or complex as needed to determine if an emergency medical condition (EMC) exists.
- Providers have discretion to determine when an emergency medical condition exists, as, under EMTALA, an EMC is present when there are acute symptoms of enough severity such that the absence of immediate medical attention could reasonably be expected to result in serious impairment or dysfunction.
- Hospitals may set up alternative screening sites, as the MSE does not have to be the ED, and patients can be redirected to these alternate sites for the MSE (except that individuals already in the ED cannot be redirected to an off-site location for the MSE).
- Hospitals and local communities may set up alternate sites for screening; EMTALA obligations may vary depending on the site.
- Personnel engaged in the directing of individuals must be qualified to recognize individuals who are obviously in need of immediate treatment in the ED.

- An MSE must be conducted by qualified personnel, which may include physicians, nurse practitioners, physician's assistants, or RNs trained to perform MSEs and acting within the scope of their State Practice Act.
- A hospital's EMTALA obligations are satisfied if an individual receives an appropriate medical screening and otherwise meets criteria for a COVID-19 person under investigation but is determined to show no signs or symptoms indicating an EMC.
- In cases where an EMC is unlikely, a hospital's EMTALA obligations are satisfied if an individual indicates they are not seeking emergency care and are appropriately questioned by a qualified medical professional to ensure an EMC does not exist.
- Hospitals may transfer patients, as appropriate, to facilities with specialized capabilities.

THA believes this guidance provides ample flexibility in meeting EMTALA obligations and allows for alternate MSE sites as may be appropriate. **Nothing herein is intended as legal advice from THA and please review CMS's guidance to determine the best course of action for your facilities.**

THA is monitoring the issue of a federal EMTALA waiver. At this point in time, the [requirements for an EMTALA-related waiver](#) have not been met – which, among other things, includes a disaster or emergency declaration from the President of the United States.

THA remains in contact with state and federal officials regarding COVID-19 and continues to discuss EMTALA obligations and the appropriate use of alternate MSE sites. THA will provide any additional information as it is available.