

Blog Post

Some Things Never Change: EMTALA in the Time of COVID-19

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Even in this time of crisis, nothing has changed about a hospital's obligation to comply with the Emergency Medical Treatment and Labor Act (EMTALA). However, the Centers for Medicare and Medicaid Services (CMS) has issued guidance (available [here](#)) to, and some flexibility for, hospitals on how to provide care to the growing influx of patients during the COVID-19 pandemic.

As a refresher, a Medicare participating hospital with a dedicated emergency department (ED) is required, under EMTALA, to:

- Provide an appropriate medical screening examination (MSE) to any individual who comes to the ED in order to determine if the individual has an emergency medical condition (EMC). The examination must be performed by a qualified medical person, acting within his/her scope of practice, as defined under hospital medical staff bylaws and state law.
- If the individual has an EMC, necessary stabilizing treatment must be provided, within the hospital's capability and capacity. Stabilizing treatment means that the hospital shall provide necessary medical treatment to assure, "within reasonable medical probability, that no material deterioration of the patient's condition is likely to occur."

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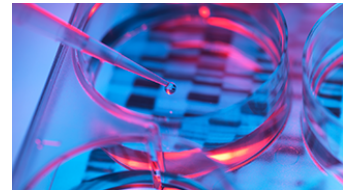
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- If a hospital is unable to stabilize, an appropriate transfer should be implemented.



Screening Individuals with Possible or Confirmed COVID-19 in the ED

During the current pandemic, hospitals are required to “screen, isolate, and begin stabilizing treatment,” for any individual with possible or confirmed COVID-19 who presents to the ED. Specifically, if an individual arrives at the ED with suspected or confirmed COVID-19, the hospital must:

- Have a qualified medical person provide an appropriate MSE, as discussed above, to determine if the individual has an EMC. If the medical personnel conducting the MSE is not designated to do so within the hospital bylaws, the hospital may now request a waiver to allow them to do so as long as they are acting within their scope of practice and license.
- Apply CDC criteria as part of the MSE to determine whether the individual has potential or confirmed COVID-19 (see guidance available [here](#) and [here](#)). If the individual meets the criteria, then the hospital must:
 - Isolate the individual as soon as possible.
 - Coordinate with state or local public health officials.
 - Adhere to accepted standards of infection-control, including ensuring the staff has the necessary personal protective equipment (PPE) and is using it appropriately (see guidance [here](#) and [here](#)).
 - Begin stabilizing treatment, as appropriate.

Alternative Screening Sites

If hospitals need additional space to screen possible COVID-19 patients, they may set up alternative screening sites, both on and off the hospital campus.

Depending on which type of site is used, the hospital must comply with several requirements.

On-Campus Screening Sites for COVID-19.

- A hospital does not need to seek CMS approval to use an existing part of the hospital as an alternative screening location; however, the hospital needs to determine whether applicable state requirements must be followed.
- Individuals should be logged-in where the MSE is provided, whether at the on-campus site or in the ED.
- If an individual presents to the ED first, they may be redirected to the on-campus screening site to be logged and screened.
- A qualified staff member (e.g. a registered nurse) should be stationed at the ED in order to determine whether the individual needs to be seen immediately in the ED or whether they can be redirected to the alternate screening site. Non-clinical staff may be stationed at other hospital entrances to redirect individuals to the on-campus screening location.

Off-Campus, Hospital Controlled Sites.

- Normally, a hospital cannot redirect an individual seeking treatment at the ED to go to an off-site location for an MSE. However, pursuant to an 1135 Waiver (available [here](#)), CMS is now permitting hospitals to redirect patients to an off-site location for screening, as long as this is in accordance with the state's emergency preparedness or pandemic plan. The decision to redirect the patient to another location cannot discriminate based on source of payment or ability to pay.
- EMTALA requirements do not apply to off-campus sites that are not dedicated EDs. Such sites should not represent themselves to the public as such. They may, however, be referred to

as respiratory or potential/presumed COVID-19 patient screening centers.

- Staff at these off-campus sites should be trained to evaluate COVID-19 symptoms.
- If an individual presents with a condition that requires additional medical attention, the hospital should arrange for an appropriate referral/transfer.

Testing Stations, Not Controlled by Hospital.

- Hospitals may set up testing stations at sites not under the hospital's control (e.g., malls, retail parking lots).
- If these sites have been established for COVID-19 testing purposes only, EMTALA does not apply. If an individual seeks treatment at the ED, the hospital must first perform an MSE to determine whether the person has an EMC before redirecting him/her to the off-site location for COVID-19 testing.
- The off-site location should be staffed with medical personnel trained to evaluate potential or presumed COVID-19 symptoms.
- The site should have a protocol in place for situations when the patient requires transport to a hospital for immediate care. For example, the process may be to call 911.

Important Reminders

Additional items hospitals need to keep in mind:

- *ICU Capabilities.* Hospitals without intensive care unit (ICU) capabilities are still required to provide individuals with suspected or confirmed COVID-19 with an MSE and to initiate stabilizing treatment, when appropriate.
- *Violations.* A hospital may be found to be in violation of EMTALA if it refuses to screen an individual who presents to the ED with suspected or confirmed COVID-19.

- *Diversionary Status.* If a hospital is required to place its ED on diversionary status, it still has an EMTALA obligation to those individuals undergoing examination or treatment at the time that it stopped accepting new patients. In addition, the hospital would still have an EMTALA obligation to individuals who come to the hospital and request examination or treatment for an EMC.
- *PPE.* A hospital cannot decline to perform an MSE on an individual who presents to the ED with potential or suspected COVID-19, even if the hospital does not have sufficient PPE at the facility.
- *Against Medical Advice.* If an individual who meets the screening criteria for suspected COVID-19 wants to leave the hospital against medical advice, the hospital is obligated, under EMTALA, to take all reasonable steps to obtain the individual's written informed refusal. In addition, the hospital should coordinate with state and local public health authorities to determine if any additional steps are required.

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