

# EMTALA and Disasters

Updated May 7, 2018  
Originally Published: January 2018

This fact sheet addresses several frequently asked questions regarding the Emergency Medical Treatment and Labor Act (EMTALA) and disasters, and provides links to resources for more information. It is not intended to be used as regulatory guidance or in place of communications with or guidance from the Centers for Medicare & Medicaid Services (CMS) who oversee EMTALA compliance.

## What is “EMTALA?”

EMTALA is a federal law that requires all Medicare-participating hospitals with emergency departments (ED) to perform the following for all individuals that come to the ED regardless of the individual’s ability to pay:

- An appropriate medical screening exam (MSE) to determine if the individual has an emergency medical condition (EMC). If there is no EMC, the hospital’s EMTALA obligation ends.
- If there is an EMC, the hospital must:
  - Treat and stabilize the EMC within its capability (including admission) OR
  - Appropriately transfer the individual to a hospital that has the capability and capacity to stabilize the EMC if the presenting hospital is unable to do so. Outside of a mass casualty, transfers prior to stabilization are generally only “appropriate” if the transfer is requested in writing by the patient after being informed of the hospital’s obligations and the risks of transfer, or a physician or qualified medical person in consultation with a physician, certifies that the benefits of transfer outweigh the risks. (Updated May 7, 2018)

*Response modified from [EMTALA & Surges in Demand for Emergency Department Services During a Pandemic](#)*

## Can EMTALA be Waived in an Emergency or Disaster?

Under certain circumstances, sanctions for violations of EMTALA obligations may be waived for a hospital. The EMTALA MSE and stabilization sanctions can be waived under the following circumstances:

- 1) The President declares an emergency or disaster under the Stafford Act or the National Emergencies Act; AND
- 2) The Secretary of Health and Human Services declares that a Public Health Emergency (PHE) exists and also authorizes EMTALA waivers under section 1135 of the Social Security Act. Notice of EMTALA waivers will be provided through CMS to covered entities; AND
- 3) Unless EMTALA waivers are granted for an entire geographic area, the hospital applies for a waiver; AND
- 4) The hospital must have activated its emergency operations plan; AND
- 5) The State must have activated its emergency operations plan or pandemic plan for an area that covers the affected hospital.

The waiver generally lasts for 72 hours after the emergency is declared and the facility's emergency plan is activated (in case of a pandemic the waiver will last until the termination of the PHE declaration). Even in the case of a waiver, however, the hospital is still responsible for ensuring the safety of the patients in its care.

Local or state declarations or waivers cannot alter, waive, or otherwise address EMTALA, as EMTALA is a federal law.

*Response modified from [EMTALA & Surges in Demand for Emergency Department Services During a Pandemic and CMS Public Health Emergency Declaration Questions and Answers](#)*

## Can EMTALA be Waived Retroactively?

An EMTALA waiver can be applied back to the effective date of the emergency period AND activation of the hospital emergency operations plan. The emergency period begins on the date in which there are both a disaster or emergency declaration by the President and a PHE declaration by the HHS Secretary for the event. A waiver cannot be applied before the effective date of the emergency period.

For example, if a precipitating event occurs on a Saturday at noon, the hospital activates its emergency plan immediately following the event, a presidential declaration is made, effective Sunday at noon, and a public health emergency is declared and 1135 waiver authority invoked, effective Monday at noon, the EMTALA waiver could not be effective any earlier than Monday at noon. Please note that this is an extreme example to demonstrate the hierarchy of the declaration process. Generally, FEMA and HHS work together to ensure the effective dates of declarations are issued to provide the regulatory relief and aid necessary to support the response and the presidential declarations, PHE declarations, and 1135 waiver authorization can be issued and dated retroactively, as has been done numerous times during past responses.

*Response modified from [EMTALA & Surges in Demand for Emergency Department Services During a Pandemic](#)*

## How Can Hospitals Comply with EMTALA in a Disaster or Emergency?

EMTALA was enacted to ensure the safety of all patients seeking care in EDs, therefore in disaster, mass casualty, or emergency situations, EMTALA provisions must be followed. In these cases, hospitals remain responsible for MSE examinations, which can be conducted by licensed health professionals including physicians, nurse practitioners, physician assistants, and nurses trained to conduct such exams. The MSE can be adjusted for the appropriateness of the event and for the presenting signs and symptoms, (e.g. assessing a group of people for high acuity injury or illness by visual exam and group questions by exclusion). After an MSE is conducted and documented to the best of the clinician's ability, under the circumstances, the patients can be transferred or referred to other hospitals that are less affected by the event/volume of patients in accordance with the hospital's emergency/community response plan. For tips for managing an influx of patients in a mass casualty, review the ASPR TRACIE tip sheet, [No Notice Incidents: Hospital Triage, Intake, and Throughput](#).

## What Strategies Can Hospitals Use to Manage Surge and Comply with EMTALA?

Hospitals may set up alternative screening sites on campus for emergencies such as pandemics or other events where an alternative area is appropriate.

Hospitals, working with their local emergency medical service (EMS) providers, can determine diversion criteria and protocols to limit the amount of patients arriving by EMS. Hospitals can also work with their local healthcare coalitions and emergency management agencies to develop emergency department saturation plans, public communication campaigns, and other appropriate measures to help evenly disperse patient load. Communities may also opt to establish alternate care sites not affiliated with any particular hospital or located on the grounds of any licensed facility. In this case/within these sites, EMTALA would not apply.

Most importantly, regardless of EMS diversion or plans in the community to direct patients to specific facilities, once a patient arrives at an ED, EMTALA applies. For example, a patient suspected of having a highly infectious disease that requires stabilization cannot be transferred to another facility without an MSE and any necessary stabilization or treatment.

**NOTE:** ASPR TRACIE has received inquiries regarding a specific scenario and recommended strategies to address surge under those specific circumstances:

In the event that an incident with the potential to massively overwhelm available resources occurs within close proximity to a hospital, the hospital may quickly become overwhelmed yet patients may continue to present to the hospital outside of EMS (e.g., walk-ins and in personally owned vehicles, police vehicles) and can't be diverted.

*Question: Under this scenario, how can a hospital comply with EMTALA, while also ensuring patients receive care as quickly as possible, which may involve transfer to another facility?*

*Answer:* A hospital can consider coordinating triage and redistribution of patients in partnership with EMS and other local hospitals. Triage can be established inside or outside the hospital. A qualified healthcare provider from the affected hospital can conduct an MSE as described above. Once triaged/evaluated, these patients can either be sent inside the affected hospital or appropriately redistributed to other receiving facilities that have agreed to accept patients through EMS, medical command, or other coordinating entities, based upon the number of patients and severity of injury.

For example, if it had been determined through pre-existing plans and planning or other real-time means (e.g., by onsite EMS, dispatch, a healthcare coalition, or other process specific to the affected jurisdiction) that local hospitals A, B, and C can accept 50 critical, 100 immediate, and 300 walking wounded, onsite EMS and the hospital-based qualified healthcare provider(s) could complete the MSE and redirect and coordinate transfer of those patients without having to speak (clinician to clinician) directly to the receiving hospitals for each individual patient.

In addition, for those providers affected by the CMS Emergency Preparedness Final Rule, these specific issues should be considered in the development of a facility's risk assessment and overall emergency preparedness program. MSEs can occur based on numerous hazards to include flooding and active shooter incidents, therefore it is encouraged that facilities document their policies and procedures for transfer situations. (Updated May 7, 2018)

*Response modified from [EMTALA & Surges in Demand for Emergency Department Services During a Pandemic](#), [EMTALA Questions and Answers](#), and [EMTALA Requirements and Implications Related to Ebola Virus Disease](#)*

## **Are there Additional Actions that Can be Taken to Address Patient Surge without an EMTALA Waiver? (Updated May 7, 2018)**

CMS has provided considerable information on ways to increase inpatient and outpatient capacity **without the need for 1135 waivers**. Inpatient surge activities include early discharge planning, opening already certified beds or units, and the use of remote locations. Outpatient surge activities include the use of tents or mobile facilities located on/within the hospitals' campus as a temporary means of allowing for the management of outpatient surge. These temporary facilities must meet all of the CMS Conditions of Participation AND must comply with all state and county licensure and life safety code requirements.

This information is described in detail in the fact sheet [Hospital Alternative Care Sites during H1N1 Public Health Emergency](#) starting on page 7 of 14 for inpatient surge, and page 9 of 14 for outpatient surge actions and impacts on conditions of participation permissible without waivers. Page 13 and 14 of this fact sheet describe implications of surge sites on Life Safety Code and discuss degraded but safe conditions.

As always, when using surge strategies, notify your state licensing agency and CMS Regional Offices to discuss the specifics of your facility's solution.

### *Resources*

[ASPR TRACIE CMS and Disasters: Resources at Your Fingertips](#)

[ASPR TRACIE EMTALA and Disasters](#)

[Emergency Medical Treatment and Labor Act \(EMTALA\) Requirements and Options for Hospitals in a Disaster](#)

[Hospital Alternative Care Sites during H1N1 Public Health Emergency](#)

## **Are there any EMTALA Provisions that Address Safety and Security of Staff, Patients, and Visitors in a Situation Where the Hospital is Potentially Unsafe?**

In a situation where the hospital is a potential site of emergency operations (e.g., an on-campus shooter, fire, flood, or other event where the hospital is potentially compromised), ED personnel still have a duty to protect the health and safety of their patients, staff, and visitors. If an individual presents to the affected emergency department, despite security or safety issues, EMTALA still applies and the patient must receive an MSE to determine if an EMC is present. They must also receive stabilizing care and/or be transferred to an appropriate facility to provide care as warranted. The MSE can be adjusted to the specific patient and scenario, as appropriate. If a law enforcement perimeter is established that prevents patients from coming onto the campus or into the hospital, then EMTALA would not apply. Further, if there is an immediate risk to providers and the providers feel they cannot provide an MSE or stabilizing care without risking their lives, it might be necessary to delay care until the security or safety issue is resolved.

## Does EMTALA Apply if a Shooting or Other Event Occurs Outside my Facility?

Yes. EMTALA applies to any injured, ill, or laboring person on the hospital grounds, which includes hospital-owned or operated parking areas, sidewalks, and other grounds. As previously mentioned, if the scene presents an immediate safety risk to the providers, the provision of an MSE and stabilizing treatment may have to await the arrival of law enforcement to secure the safety of the situation.

## Where Can I Find Examples of Previous EMTALA Waivers and Information on Requesting a Waiver?

The Secretary of Health and Human Services can [waive EMTALA sanctions under section 1135 of the Social Security Act](#). CMS provides information on [requesting an 1135 waiver](#), [information to provide for an 1135 waiver](#), and related content on its [1135 waiver web page](#). ASPR has provided [examples of previous waiver or modification of requirements under section 1135 of the Social Security Act on their website](#).

## Who Can Answer Questions About my Hospital's Emergency Operations Plans and EMTALA Considerations?

Questions on EMTALA compliance and violations should be addressed to your [regional/local CMS Office](#).

### Additional Resources

American Academy of Emergency Medicine. (2017). [EMTALA](#)

American College of Emergency Physicians. (2017). [EMTALA: News Media](#).

American Hospital Association. (2001). [EMTALA Questions and Answers](#).

Centers for Medicare & Medicaid Services. (2017). [Emergency Medical Treatment and Labor Act \(EMTALA\)](#).

Centers for Medicare & Medicaid Services. (2014). [Emergency Medical Treatment and Labor Act Requirements and Implications Related to Ebola Virus Disease \(Ebola\)](#).

Centers for Medicare & Medicaid Services. (2009). [Emergency Medical Treatment and Labor Act \(EMTALA\) Requirements and Options for Hospitals in a Disaster](#).

Centers for Medicare & Medicaid Services. (n.d.). [Public Health Emergency Declaration Questions and Answers](#). (Accessed 12/11/2017.)

Finan, S., et al. (2006). [Disaster Preparedness: Legal Issues Faced by Hospitals in the Post-Katrina Environment](#). American Bar Association – ABA Health eSOURCE.

Zibulewsky, J. (2001). [The Emergency Medical Treatment and Active Labor Act \(EMTALA\): What It is and What it Means for Physicians](#).