



Emergency Medical Treatment and Labor Act (EMTALA) and the Born-Alive Infant Protection Act

MLN Matters Number: SE19012

Related Change Request (CR) Number: N/A

Article Release Date: June 27, 2019

Effective Date: N/A

Related CR Transmittal Number: N/A

Implementation Date: N/A

PROVIDER TYPES AFFECTED

This MLN Matters Article is for Medicare participating hospitals (including critical access hospitals).

WHAT YOU NEED TO KNOW

EMTALA requires Medicare participating hospitals (including critical access hospitals) to perform the following:

- Provide medical screening examinations to every individual, including women in labor, their unborn child(ren), and newly born infants protected by the Born-Alive Infant Protection Act when they present for care to dedicated emergency departments, which includes labor and delivery departments, or other locations on the hospital campus;
- Provide stabilizing treatment within the hospital's capabilities to any individual, including a born-alive infant, with an emergency medical condition;
- If unable to stabilize the emergency medical condition, arrange for an appropriate transfer to another hospital with specialized services for the necessary stabilizing treatment; and,
- Accept appropriate transfers of patients with unstable emergency medical conditions if the hospital has the capabilities and capacity to provide necessary stabilizing treatment.

EMTALA protections start for an infant at time of birth. A newly born infant is presumed to be presenting with an emergency medical condition and requires a medical screening examination to determine necessary stabilizing treatment. EMTALA requires physicians and other qualified practitioners to provide care within nationally accepted standards of practice.

As long as an infant has an unstabilized emergency medical condition in need of stabilizing treatment, EMTALA continues to apply. If the hospital has the capabilities to stabilize the emergency medical condition, it is required to do so. If not, the hospital must arrange an

appropriate transfer of the infant to a hospital with specialized capabilities and capacity, while providing care until the transfer is effectuated. Once the infant is admitted in good faith to stabilize the emergency medical condition, EMTALA no longer applies. The Centers for Medicare & Medicaid Services (CMS) hospital or critical access hospital Conditions of Participation apply throughout the hospital stay.

Communication Between Healthcare Professionals and Patients

CMS encourages healthcare professionals, including obstetricians, midwives, pediatricians, family practice practitioners and others providing prenatal care to engage in thoughtful discussions with pregnant women throughout the course of their pregnancy. The discussions should reference potential emergencies and serious conditions that may occur to the pregnant woman, her unborn fetus, and born-alive infant. Discussing potential serious occurrences during the prenatal period provides an opportunity for the pregnant woman and her healthcare provider to anticipate and be prepared to respond to potentially difficult decisions during an emergency situation. Clarifying patient preferences prior to an emergency situation may assist in the decision making process for both the patient and her healthcare provider.

The CMS hospital Condition of Participation for Patient Rights states the hospital must protect and promote each patient's rights. The patient has the right to participate in the development and implementation of her care. The patient also has the right to make informed decisions regarding her care, including being informed and being able to request or refuse treatment.

Reporting Concerns or Complaints Regarding EMTALA

Concerns regarding a hospital's compliance with EMTALA and the Medicare hospital Conditions of Participation can be reported to the State Survey Agency or the CMS Regional Office for evaluation and possible investigation. Complaints can be generated by patients, family members, healthcare professionals, and other interested parties. The enforcement of EMTALA is a complaint driven process. It is important to note that as a complaint driven process, EMTALA is not a mechanism for immediate response at the time of any occurrence, in this instance at the time of delivery of a born-alive infant.

The CMS Regional Office evaluates the complaint allegations to determine if criteria are met for onsite investigations and, if so, authorizes the State Survey Agency to investigate. While onsite, surveyors review compliance with all EMTALA requirements and, if applicable, the Conditions of Participation. The investigation is accomplished by reviewing medical records, patient logs including transfers in and out, on-call physician and staffing schedules, policies and procedures, and other documentation. Surveyors interview patients, family members, and hospital staff and may perform observations of patient and staff processes while onsite.

After the onsite survey the CMS Regional Office sends the EMTALA case to Quality Improvement Organization expert physician reviewers to evaluate the provision of medical, surgical, obstetric, psychiatric, or other type of care provided. The physician reviewers evaluate the care, or lack of care, provided in accordance with national standards of practice. It is outside the scope of State Survey Agency or Regional Office surveyors to determine if the care provided was appropriate; this determination is the responsibility of the Quality Improvement

Organization expert physician reviewer.

ADDITIONAL INFORMATION

- **State Survey Agency Contact Information:** <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Complaintcontacts.pdf>
- **CMS Regional Office Contact Information:** [https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Regional and Central Office Contacts.pdf](https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Regional_and_Central_Office_Contacts.pdf)
- **CMS State Operations Manual Chapter 5 Complaints:** <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c05.pdf>
- **CMS State Operations Manual Appendix V EMTALA:** https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_v_emerg.pdf

DOCUMENT HISTORY

Date of Change	Description
June 27, 2019	Initial article released.

Disclaimer: This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents. CPT only copyright 2018 American Medical Association. All rights reserved.

Copyright © 2013-2019, the American Hospital Association, Chicago, Illinois. Reproduced by CMS with permission. No portion of the AHA copyrighted materials contained within this publication may be copied without the express written consent of the AHA. AHA copyrighted materials including the UB-04 codes and descriptions may not be removed, copied, or utilized within any software, product, service, solution or derivative work without the written consent of the AHA. If an entity wishes to utilize any AHA materials, please contact the AHA at 312-893-6816. Making copies or utilizing the content of the UB-04 Manual, including the codes and/or descriptions, for internal purposes, resale and/or to be used in any product or publication; creating any modified or derivative work of the UB-04 Manual and/or codes and descriptions; and/or making any commercial use of UB-04 Manual or any portion thereof, including the codes and/or descriptions, is only authorized with an express license from the American Hospital Association. To license the electronic data file of UB-04 Data Specifications, contact Tim Carlson at (312) 893-6816. You may also contact us at ub04@healthforum.com

The American Hospital Association (the "AHA") has not reviewed, and is not responsible for, the completeness or accuracy of any information contained in this material, nor was the AHA or any of its affiliates, involved in the preparation of this material, or the analysis of information provided in the material. The views and/or positions presented in the material do not necessarily represent the views of the AHA. CMS and its products and services are not endorsed by the AHA or any of its affiliates.