



MEDICAL - LEGAL

Review of Emergency Medical Treatment & Active Labor Act (EMTALA)

Daniel M. Avery, MD

The Emergency Medical Treatment and Active Labor Act (EMTALA), often called the “anti-dumping law,” was passed by Congress to prevent patients from being refused treatment or being transferred to another hospital when they are unstable. This paper summarizes the basic concepts of EMTALA and is taken directly from the EMTALA website and the EMTALA Section of the American College of Emergency Physicians (ACEP) website. It discusses appropriate medical screening, women in active labor, components of an appropriate transfer, obligations of hospitals and physicians, and penalties. The salient points are outlined below.

The Emergency Medical Treatment and Active Labor Act (EMTALA), occasionally referred to as “the Cobra Law,” was enacted by Congress in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985.^{1,2} This statute governs how a patient may be refused treatment or transferred from one hospital to another when he or she is in an unstable medical condition. It is also known as the “anti-dumping law.”² The purpose of the statute is to prevent hospitals from rejecting patients, refusing to treat them, and transferring patients to indigent hospitals.²

Patients presenting at emergency rooms must be given an appropriate medical screening examination to determine if that patient is suffering from an emergency medical condition. Pregnant women presenting in labor must be admitted and treated until the baby and placenta are delivered, unless a transfer under the statute is appropriate.¹ A physician or nurse practitioner, qualified by the hospital bylaws, must perform the screening examination. Sometimes the determination that an emergency medical condition exists must be made quickly as information is available but may be subject to review later., It is very difficult to deliver a patient at term in advanced labor without capabilities for obstetrics and even more worrisome when the impending delivery is premature.

The determination of whether a woman is in labor falls under the auspices of an emergency medical condition. Consideration as to whether there is adequate time to effect a transfer to another hospital before the delivery or whether the transfer may pose a threat to the health or safety of the woman or her unborn child are essential.¹ This also considers the fact that the course of labor can be unpredictable and a precipitous delivery may occur.¹ **It is very difficult to determine precisely when it is too late for a safe transfer and is usually done as part of professional judgment.¹**

The following constitutes an appropriate transfer before stabilization has occurred:¹

- Patient has been treated and stabilized as far as possible.
- Patient needs treatment at the receiving facility and the medical risks of transfer are outweighed by the medical benefits of transfer.
- Weighing process is certified in writing by a physician.
- Receiving hospital accepts transfer and has facilities for treatment.
- Medical records accompany patient.
- Transfer is effected by qualified personnel and transportation equipment.¹

The certification must state the risks and benefits of transfer. The certification must be signed by the transferring physician. A patient may request transfer to another hospital, but it must be an appropriate transfer.¹

The EMTALA provisions only apply to hospitals, and they bear the brunt of the loss if liability is found.¹ A hospital, however, may seek a claim for reimbursement from a physician who has incurred the liability for the hospital.¹

Obligations of Physicians

There are certain provisions which pertain to physicians and are listed below:¹

- Penalty for failing to respond to an emergency when the physician is assigned as the on-call physician.
- Falsifying a certification for transfer.
- Violation of specialty hospital obligations.¹

The penalty for these adds exclusion from the Medicare Provider program. If the physician fails to diagnose an emergency medical condition, EMTALA generally does not apply to the case, but the physician may be at risk for a professional negligence claim.¹ If the screening for an emergency medical condition is insufficient, the physician may be in violation of EMTALA.¹

Obligations of Hospitals

There are obligations for hospitals listed below:¹

- Hospitals with specialized capabilities or facilities may not refuse to accept a patient in transfer if it has the capacity to treat the patient.
- Receiving hospital is obligated to accept the patient if it has the capacity to treat the patient, even if only for overcrowding or lack of personnel at the transferring hospital.
- The receiving hospital does not have to be the closest hospital if it has the capabilities to treat the patient.
- Duty of reporting a patient transferred who was not stable (called the “snitch rule”) carries with it the risk of disqualification from the Medicare Provider program.
- Transferring hospital must insure that patient be accompanied by “qualified personnel and transportation equipment.”¹ This has been interpreted to mean the hospital sending its own employees. There is one case in which qualified personnel was interpreted to mean a physician capable of performing a cesarean section. Unfortunately, the court did not explain how a physician would perform a cesarean section in an ambulance.

Penalties for Violation

Penalties for violation are listed below:¹

- Civil money penalty of up to \$50,000 per violation; if the hospital has fewer than 100 beds, the maximum penalty is \$25,000 per violation.¹
- Civil money penalty to physician for certifying that the benefits of transfer outweighed the risks when it did not.¹
- Civil money penalty to physician for misrepresenting the patient’s condition.¹
- Penalty to physician and/or hospital for on-call physician failing or refusing to appear after being called.¹

- Hospital may have its Medicare Provider agreement revoked. This is called the “Medicare death penalty”¹

Civil Liability With Claims Under EMTALA

There is also civil liability under EMTALA:¹

- Hospital may be held liable to an injured person in a civil action for damages.¹
- Hospital may be held liable to another hospital in a civil action for financial loss suffered by second hospital.¹
- Medical insurer may recover from the transferring hospital money paid on behalf of the patient.¹
- Claims for medical malpractice may occur in addition to EMTALA.¹
- Compliance with the standard of care does not necessarily mean compliance with EMTALA.¹

Special Situations Under EMTALA

There are no official staffing requirements imposed by EMTALA.¹ Physicians are not required by EMTALA to serve on a call schedule. There is a penalty for a physician who fails to respond to an emergency when he is designated the on-call physician. Traditionally, any specialty that has three or more physicians in that specialty is required to offer 24-hour call coverage. Full-time coverage is not expected if there are less than three physicians in a specialty without violating EMTALA.¹ Physicians may take call at more than one hospital, and they can direct an emergency department to send patients to where they are.¹ If the patient has to wait a long time, the hospital runs the risk that the patient may leave, raising the claim that an initial assessment was not done.¹

Daniel M. Avery, MD, is Associate Professor and Chair Department of Obstetrics & Gynecology, at the University of Alabama School of Medicine.

Potential Financial Conflicts of Interest: By AJCM® policy, all authors are required to disclose any and all commercial, financial, and other relationships in any way related to the subject of this article that might create any potential conflict of interest. The author has stated that no such relationships exist.

References

1. Frequently Asked Questions about the Emergency Medical Treatment and Active Labor Act (EMTALA), available at <http://www.emtala.com/faq.htm>.
2. American College of Emergency Physicians: EMTALA, available at <http://www.acep.org/webportal/Templates/Default>.