

The Emergency Medical Treatment and Active Labor Act 2006

[42 USC 1395dd]

[42 CFR 489.24]

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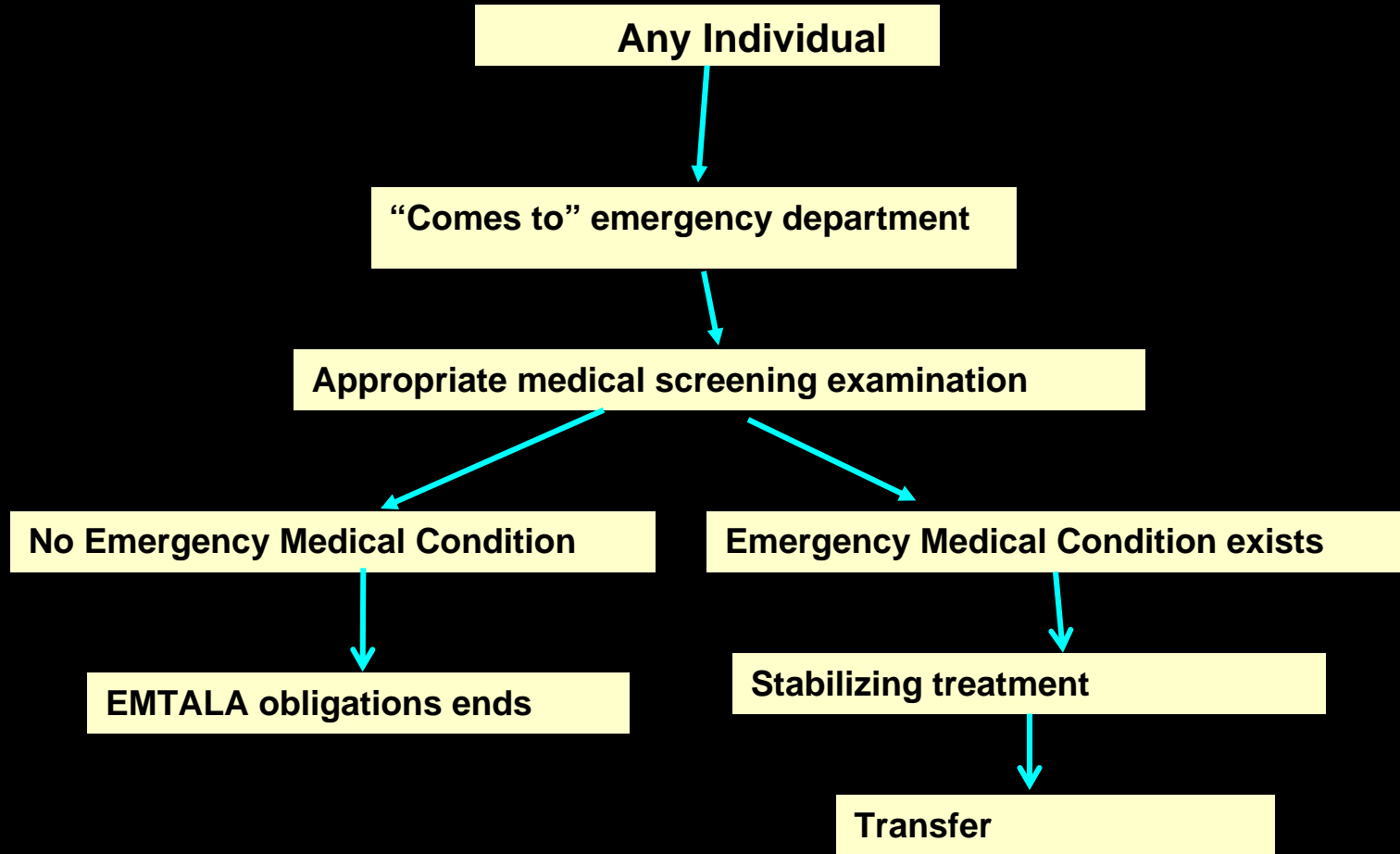
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EMTALA – Basic Scheme

42 US 1395 dd

42 CFR 489.24



Important Terms

Individual “comes to” the ED



Must perform **MSE** – includes ancillary services



Must determine if **emergency medical condition** exists



If EMC exists = *must stabilize* before transfer

“Comes to” the ED

42 CFR 489.24 (b)

- 1) Has presented at *hospital's dedicated ED* and requests examination or treatment or request is made on his behalf, or a prudent layperson would believe that the individual needs an examination
- 2) Has presented on *hospital property* other than hospital's dedicated ED and requests examination or treatment...

“Comes to” the ED

42 CFR 489.24 (b)

- 3) If transported by *ambulance owned and operated by the hospital*... even if the ambulance is not on hospital grounds.

- 4) This provision does not apply if the hospital-owned ambulance is operating under *community wide EMS protocols* that direct it to transport the individual to another hospital...

“Comes to” the ED

42 CFR 489.24 (b)

- 5) *Nonhospital-owned ambulance* – if the individual arrives on hospital property for examination and treatment of a medical condition at the hospital’s dedicated ED...
- However, if diversionary status (hospital does not have staff or facilities) the ambulance can be diverted.

However, if ambulance arrives anyway,
EMTALA applies

Dedicated Emergency Department

42 CFR 489.24 (b)

- 1) Is licensed by the state as an emergency department
- 2) Is held out to the public (by name, advertising, posted signs, other means) as a place that provides care to emergency situations on an urgent basis without an appointment
- 3) During the previous year provided at least 1/3 of visits for emergency treatment without requiring a scheduled appointment

Hospital Property

Sec 413.65(a-b); 489.24(b)

- Includes the entire hospital campus EXCEPT areas that participate in Medicare separately
- Thus, encompasses all parts of the hospital other than the dedicated emergency department that participates in Medicare under the ED's Medicare #
- Includes hospital departments, parking lot, sidewalk and driveway, and any buildings owned by the hospital that are within 250 yards of the hospital

Emergency Medical Condition

1395dd (e); 489.24 (b)

A medical condition with acute symptoms (including pain, psychiatric sx's, or substance abuse) where the lack of immediate medical attention could reasonably be expected to:

- 1) Place health of individual or unborn child in serious jeopardy
- 2) Cause serious impairment of bodily function or dysfunction of body organ/part

In the case of a pregnant woman having contractions

- inadequate time to transfer before delivery
- transfer may pose threat to mother or fetus

Caution!!

Intoxicated individuals may meet the definition of “emergency medical condition” because the absence of medical treatment may place their health in serious jeopardy or result in serious dysfunction of a bodily organ. Further, it is not unusual for intoxicated individuals to have unrecognized trauma.

What is an Acceptable Medical Screening?

CMS Interpretive Guidelines state the following;

- Individuals coming to the emergency room must be provided a medical screening beyond initial triage.
- The medical screening must be the same medical screening that the hospital would perform on any individual coming to the hospital's emergency room with those signs and symptoms, regardlessto pay.

What is an Acceptable Medical Screening?

- A medical screening examination is the process required to reach with reasonable clinical confidence, the point at which it can be determined whether a medical emergency does or does not exist.
- Depending upon the patient, this process will vary from only a brief H&P to a complex process involving ancillary studies and specialty consultations.

What is an Acceptable Medical Screening?

- A medical screening is not an isolated event. It is an ongoing process.
- Hospital and Department medical staff should address, through policy and medical standards, how best to provide the screening.
- Medical Screenings are required to be documented.
- ***If it isn't written down, it never happened!!***

CAUTION !!!!!

- Case history has not been kind to hospitals who utilized non-physician medical screeners even though by law it is allowed.
- **TRAIGE IS NOT CONSIDERED TO BE A MEDICAL SCREENING!!!!**

Medical Screening Examination

[Center for Medicare and Medicaid Services]

- Since the purpose of the medical screening examination is to determine whether an emergency medical condition exists, the screening examination must be detailed enough to accomplish this objective. This examination should include obtaining an appropriate medical history, performing an appropriate physical examination, performing appropriate diagnostic testing, consulting with pertinent on-call physicians or other health care providers, and reassessing the patient prior to discharge/transfer. This remains an ongoing process until it has been determined whether the patient has been stabilized and discharged or transferred. **This process must be clearly and completely documented in the patient's medical records.**

Medical Screening Documentation

- Need to document why the patient is now stable enough to be transferred.
 - Is patient hemodynamically stable to the best of our capabilities?
 - Has psychiatric condition been evaluated and treated to the best of our capabilities?
 - Have any abnormal test (EKGs) been repeated if the first one was abnormal and the patient has been in our care for a lengthy period of time?

Stabilization

1395dd (e); 489.24 (b)

- No material deterioration of the condition, within reasonable medical probability, will result from or occur during the transfer of the individual
- Pregnant woman who is having contractions: To deliver the fetus and placenta

Transfer

1395dd (e); 489.24(b)

- **The movement (including the discharge) of an individual outside of the ED facilities at the direction of *any person employed by or affiliated or associated, directly or indirectly, with the hospital***
- ***Does not include***
 - the movement of a dead body
 - person who leaves AMA

Necessary stabilizing treatment for EMC

489.24(d)

If an individual (whether or not eligible for Medicare) comes to hospital and the hospital determines an EMC exists, the hospital must:

- Within the capabilities of staff and facilities available provide medical examination and treatment as required to stabilize the condition
- Transfer the individual to another facility in accordance with EMTALA regulations

Transfer

- **Rule = 1395 dd (c)(1) & 489.24(e) = Hospital must stabilize before transfer**

Only exceptions to stabilize before transfer rule

1) patient requests (without coercion)

[1395 dd (c)(1)(A)(i)]

2) benefits of transfer outweigh risks of transfer [1395 dd (c)(1)(A)(ii)]

3) MD refuses or fails to appear

[1395 dd (d)(1)(C)]

Appropriate transfer

1395 dd(c)(B); 489.24(e)

- 1) Before transfer to another hospital – must contact receiving hospital
- 2) Receiving hospital must accept patient
- 3) Physicians must sign certification acknowledging risks versus benefits of transfer
- 4) Patient must be transferred by appropriate means (including personnel)
- 5) Receiving hospital must report transfer without approval to CMS

Transfer Documentation

- Must show that the transfer was initiated by either a written request by the patient (or his/her representative) or a physician's certification.
- Must state the reason for the transfer.
- The receiving facility and the accepting physician. *Recommendation: Include a brief statement that the patient's full condition was discussed with the accepting physician.*
- The risk and benefits of the transfer.

Transfer Documentation

Risk versus Benefits!!

- Need to be realistic and pertinent to the case
- MVA is not usually a true risk of the transfer that needs to be documented in most cases
- Worsening of condition, lack of medical equipment, increase of pain, increase exposure to infection and no physician for intervention are some examples of true risk

Delay in examination or treatment

42 CFR 489.24 (d)(4)

- Hospital may not delay providing MSE or medical examination and treatment to inquire of method of payment
- Hospital may not seek, or direct an individual to seek, authorization until after MSE and medical examination and treatment has been initiated

Delay in examination or treatment

42 CFR 489.24 (d)(4)

- Hospitals may follow reasonable registration processes as long as it does not delay screening or treatment
 - Registration processes may not discourage individuals from remaining for further evaluation
- Practitioner may contact individual's physician to seek information or advise relevant to the medical treatment

Inpatients

42 CFR 489.24 (d)(2)

- If a hospital has screened an individual under paragraph (a), found to the individual to have an EMC, and admits the individual as an inpatient in good faith in order to stabilize the EMC, the hospital has satisfied its responsibilities
- EMTALA is not applicable for individuals admitted on an elective/nonemergent basis

Use of ED for nonemergency services

489.24(d)

If an individual comes to the ED and requests exam or treatment of medical condition BUT the nature of the request “makes it clear” that the medical condition is not of an emergency nature, the hospital is required to perform **ONLY SUCH SCREENING** appropriate for any individual presenting in that manner to determine that the individual does not have an emergency medical condition.

On-call physicians

42 CFR 489.24 (j)

- Each hospital must maintain MD on-call list that best meets the needs of its patients
- The hospital must have written policies and procedures that
 - Respond to situations where a particular specialty is not available or the on-call MD cannot respond because of circumstances beyond MD's control
 - Assures emergency services are available if it elects to permit on-call physicians to schedule elective surgery when they are on-call or to permit simultaneous on-call duties

EMTALA and psych patients

Physician must screen for

- **physical and mental illness**
- **history of violence to himself or others**
- **suicide attempt or voiced suicidal ideation**
- **danger to herself or others by making violent acts, gestures, or threats**
- **signs of confusion or mental status changes**
- **substance abuse that can affect the patient's cognition or judgment**

Use caution when dealing with psych patients

- ED physicians and staff should appropriately document any symptoms on which the determination that an emergency medical condition exists is based.
- **Items to screen for:**
 - Does the patient have a history of violence to himself or others?
 - Has the patient made a suicide attempt or voiced suicidal ideations?
 - Is the patient a potential danger to others through violent actions or threats?
 - Is substance abuse present that could impair their judgment or are they showing signs of confusion for which a reason cannot be determined?

“Medically Clear”

- “Medically stable” vs “medically clear”
- Both terms have great capacity to mislead
 - Concern about misdiagnosis, premature referral, and misunderstandings
- Better to write Discharge Note
 - History and physical examination
 - Mental status and neurologic exam
 - Laboratory results
 - Treatment plan
 - Transfer/discharge instructions
 - Follow up plans

**Weissberg, M: Emergency room clearance: An educational problem.
Am J Psych 1979;136:787-789.**