

# EMTALA and Disasters

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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, but 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
  - Transfer the individual to a hospital that has the capability and capacity to stabilize the EMC.

*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, an MSE examination can be conducted by licensed health professionals including physicians, nurse practitioners, physician assistants, and nurses trained to conduct such exams. The MSE can also 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, patients can be transferred or referred to other hospitals that are not as affected by the event/volume of patients.

## 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.

*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 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 web page](#). Previous examples of waiver or modification of requirements under section 1135 of the Social Security Act can be found [here](#).

## 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 [here](#).

### 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](#).