



March 23, 2020

COVID-19 and EMTALA: Waiver of Certain Sanctions and CMS Guidance for Hospitals During an Emergency

As a result of the spread of the SARS-CoV-2 virus, which can cause the 2019 Novel Coronavirus Disease (“COVID-19”), on March 9, 2020, the Centers for Medicare and Medicaid Services (“CMS”) issued a memorandum – QSO-20-15 – addressing how hospitals and critical access hospitals can fulfill their EMTALA obligations while minimizing the risk of exposure to individuals in an emergency department from those infected with COVID-19. QSO-20-15, entitled *Emergency Medical Treatment and Labor Act (EMTALA) Requirements and Implications Related to Coronavirus Disease 2019* (the “QSO”)¹, which applies to all Medicare or Medicaid providers with dedicated emergency departments, provides guidance for providers during the COVID-19 public health emergency. In addition to the QSO, the Secretary of the Department of Health and Human Services (“Secretary”) has invoked his waiver authority and waived sanctions under EMTALA for certain medical screening exams (“MSEs”) and stabilization requirements, effective March 1, 2020.²

EMTALA Waiver

The EMTALA waiver allows hospitals subject to EMTALA to do the following without sanction:

- Direct or relocate individuals who come to the emergency department (“ED”) to an alternative off-campus site for the MSE, in accordance with a state emergency or pandemic preparedness plan; and
- Effect transfers normally prohibited under EMTALA of individuals with unstable emergency medical conditions (“EMCs”), so long as the transfer is necessitated by the circumstances of the declared emergency for the COVID-19 pandemic.

The EMTALA waiver only applies if the actions taken by the hospital under the waiver do not discriminate on the basis of a patient’s source of payment or ability to pay.³ The EMTALA waiver will continue until termination of the pandemic-related public health emergency or other guidance is issued by the Secretary.

EMTALA During an Emergency (QSO Guidance Not Pursuant to the Waiver)

The QSO also provides supplemental guidance under existing EMTALA requirements for hospitals managing surges in ED patients during an emergency. In the QSO, CMS emphasizes several options, for which no waiver is required, that provide some flexibility to hospitals during an emergency, such as:

- On-Campus Screening Sites: Hospitals may set up alternative screening sites on the hospital campus to perform MSEs. Individuals may be redirected to these sites after being registered, which may occur outside the entrance to the ED. MSEs still must be conducted by qualified personnel and the hospital must provide stabilizing treatment or appropriate transfer to individuals found to have an EMC.

¹ QSO-20-15 Hospital/CAH/EMTALA; Emergency Medical Treatment and Labor Act (EMTALA) Requirements and Implications Related to Coronavirus Disease 2019 (COVID-19) can be found [here](#).

² The Waiver or Modification of Requirements Under Section 1135 of the Social Security Act can be found [here](#).

³ See CMS Publication, 1135 Waiver – At A Glance available [here](#).

- Off-Campus Screening Sites: Hospitals may not tell individuals who have already come to its ED to go to an off-site location for an MSE; however, hospitals may encourage the public to go to off-site locations instead of the hospital for screenings for influenza-like illnesses such as COVID-19. In these situations, the off-site location should be held out as a screening site for influenza-like illnesses, and not a place that provides care for EMCs in general, and the sites should be staffed with medical personnel trained to evaluate individuals with such conditions.
- Screening Clinics: Hospitals and community officials may encourage the public to go to off-site screening clinics not under a hospital’s control for influenza-like illness screenings. As is the case with an off-site location, a hospital cannot tell an individual who has already come to its ED to go to the off-site location.

EMTALA and Screening for COVID-19

The QSO strongly emphasizes that it is an EMTALA violation for hospitals to use signage that presents barriers to individuals who are suspected of having COVID-19 from coming to the ED, or to otherwise refuse to provide an appropriate MSE to an individual who has come to the ED for examination or treatment.

CMS also emphasizes that hospitals with capacity and specialized capabilities needed for stabilizing treatment are required to accept appropriate transfers of patients with suspected or confirmed COVID-19 from hospitals without the necessary capabilities. The lack of an intensive care unit does not exempt a hospital from the requirement to perform MSEs and initiate stabilizing treatment for individuals with known or suspected COVID-19.

If during an MSE, a hospital concludes an individual may be a possible COVID-19 case, the hospital is expected to isolate the patient immediately. CMS expects all hospitals to be equipped to isolate patients to minimize the risk of cross-contamination. Further, CMS urges hospitals to follow the CDC’s isolation and screening guidance⁴ and, with regard to appropriate placement of patients who meet specified COVID-19 assessment criteria, to contact their state or local public health officials when it has a case of suspected COVID-19.

We anticipate that additional guidance in response to COVID-19 will be issued in the coming days and weeks, which may include additional waivers or modifications. Health care providers who are or may be affected by the consequences of the COVID-19 pandemic should monitor additional developments and announcements from the Secretary, CMS, the Office for Civil Rights, and various other federal and state agencies. If you have any questions about the EMTALA waiver or other EMTALA guidance, please contact a member of our [national Healthcare practice group](#).

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⁴ CDC’s screening guidance for Health Care personnel regarding COVID-19 can be found [here](#).

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