

## **EMTALA Revised**

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The EMTALA (Emergency Medical Treatment and Active Labor Act) rule has recently been revised by CMS. On September 9, 2003, CMS published the revised final regulations in the Federal Register, but the new regs do not go into effect until November 10, 2003.

One of the major changes is the trigger for when EMTALA regulations *cease*. Prior to the revisions, a hospital was required to treat a patient who presented at the emergency department until the patient was “stabilized”. Under the final regulations, the hospital’s obligation ends when the patient is “admitted” (of course if the patient is never admitted and their care ends in the E.D., then stabilization remains sufficient). However while EMTALA generally focuses on a hospital’s Emergency Department (in fact the final regs make it clear that EMTALA applies to E.D.’s only and not to hospital outpatient facilities), the regulations also provide guidance for ambulance services. This guidance is especially important in regard to what triggers the *beginning* of EMTALA requirements.

Among the provisions of interest to the ambulance service industry is the clarification of what constitutes “coming to the emergency department”. The final rule makes it clear that for purposes of an ambulance NOT owned by the receiving hospital, “comes to the emergency department” means when the ambulance reaches hospital property (i.e. off the public street and onto the private property of the hospital). Prior to this clarification, there had been litigation over what constituted a patient presenting themselves at a hospital. Some courts had held, as the final rule concludes, that “coming to the emergency department” meant being on hospital property; while another court found that a person had to come through the doors of the E.D. before EMTALA rules were triggered, thereby allowing a hospital to turn away an ambulance that was in the parking lot.

For ambulance services which are owned by a hospital, the rule is different. For those services, “comes to the emergency department” means when the patient is in an ambulance (ground or air) which is owned and operated by a hospital “for purposes of examination and treatment for a medical condition at a hospital’s dedicated emergency department”. Unlike non-hospital owned ambulances, there is no distinction on whether or not the ambulance carrying the patient is on hospital property. However, the hospital-owned ambulance does not have to transport to the hospital that owns the ambulance IF it is directed under communitywide EMS protocols to transport the patient to a different facility (i.e. “the nearest appropriate facility”).

The final regulations also make it clear that hospitals can still go on “diversionary status” when they are unable to handle more patients in the E.D. However if an ambulance presents a patient to the hospital (disregarding or unaware of the “diversion”), then the hospital’s EMTALA obligations are triggered and it **MUST** accept the patient. This is extremely important for ambulance service personnel to understand. While this provision of EMTALA regulates the actions of the hospital and not the presenting ambulance

service, imagine the worst case scenario. An ambulance service presents a patient to an E.D. only to learn that the E.D. is on “diversion” and someone at the E.D. says they can not accept the patient. If after the ambulance personnel accepts this denial of treatment and moves on to the next hospital the patient dies, then the ambulance service will likely be a co-defendant in the wrongful death lawsuit under the theory that they should have known the regulations and demanded that the patient be treated. In order to avoid that kind of situation, even though EMTALA does not actually regulate the ambulance service in this regard, ambulance personnel should be aware of the regulations and be willing to voice their position on behalf of their patients.

As noted above, EMTALA is geared toward hospitals and hospital-owned facilities and services. The goal of EMTALA is to ensure the safety and adequate treatment of individuals in need of emergency medical care. In order to make sure that this goal is achieved, ambulance services and ambulance personnel need to understand the basic requirements of EMTALA and be able to make sure that their patient gets the medical services that they need and are entitled to.

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