

EMTALA: What On-call Physicians Need to Know

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In 1986, Congress enacted the Emergency Medical Treatment & Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening examination (MSE) when a request is made for examination or treatment for an emergency medical condition (EMC), including active labor, regardless of an individual's ability to pay. Hospitals are required to provide stabilizing treatment for patients with EMCs. If a hospital is unable to stabilize a patient within its capability, or if the patient requests, an appropriate transfer should be implemented.

Within the EMTALA statute, there are provisions that apply directly to physicians, such as physicians who are “on-call” for a hospital. These include physicians who refer patients to the hospital and should therefore be familiar with and understand their responsibilities when contacted regarding an emergency department (ED) patient, referral or for outpatient care follow up.

Hospitals are required to maintain a list of on-call physicians who can provide the treatment needed to stabilize an emergency medical condition. If permitted by hospital policy, an on-call physician may send a licensed non-physician practitioner to assess and help stabilize the patient. Keep in mind, the on-call physician is ultimately responsible for providing the needed care for the patient, regardless of who responds. Under EMTALA, if the ED physician requests, the on-call physician or his designee (as permitted) must appear in person to assist in stabilizing a patient.

Be familiar with hospital by-laws and medical staff rules and regulations. There may be a contractual obligation if the physician is paid to be on-call and is consulted regarding an emergency patient's care. A physician may also waive the right to refuse to see a patient when he or she has agreed to be on-call as a condition of being on the medical staff.

If an on-call physician fails to come in when requested or directs that the patient be transferred instead, both the hospital and physician may be in violation of EMTALA and subject to a fine of up to \$104,826 per violation for physicians and hospitals over 100 beds and up to \$52,414 per violation for hospitals under 100 beds.

The Physician-patient Relationship

In some cases, a physician-patient relationship is established even when the on-call physician does not personally examine or treat the patient. The on-call physician may be "treating" a patient jointly with the ED physician when:

- The ED physician relies on the on-call physician's expertise instead of exercising his or her own judgment in treating the patient
- The on-call physician interprets patient data such as diagnostics, labs, EKGs or radiology images
- The on-call physician prescribes treatment for a particular patient or contributes to the diagnosis

A physician-patient relationship will most likely not be established:

- If the on-call physician simply provides general patient care advice
- If the treating physician uses independent judgment when determining whether to accept or reject a consulting physician's advice
- If the on-call physician is consulted for a possible referral of a patient

Just being on-call does not automatically establish a physician-patient relationship and does not necessarily impose a duty on the on-call physician. However, a physician-patient relationship may be established if a patient, or someone on the patient's behalf, seeks care and the on-call physician provides treatment or other services to the patient.

Documenting "Informal" Conversations

If you are contacted by the emergency department to offer advice that is intended to educate a provider seeking general information, documentation may not be necessary. But, if the advice you are providing is related to a specific patient, treatment plan or includes interpreting diagnostic studies, the conversation should be documented. Also, if the conversation becomes very involved, it is strongly recommended that the consulting physician suggest a formal consult.

Post-ED Care

Upon discharge from the ED, a patient may be stable from an EMTALA standpoint, but still require care of the underlying medical condition, either as an outpatient or later as an inpatient. A hospital does not have any obligation to arrange for ongoing medical care, but it is expected to provide discharged patients with the information they need to obtain follow-up care to prevent a relapse or worsening of their medical condition.

In the event that an ED patient is provided a name of an on-call physician for an outpatient referral, generally there is no obligation for the on-call physician to see the patient, unless:

- The physician agrees to see the patient or
- The on-call physician is required based on hospital by-laws

It is not uncommon for hospital bylaws to require one follow-up visit rather than ongoing care. The patient should be

informed of this at the time of the referral. It is then up to the on-call physician, in collaboration with the patient, whether the relationship will extend beyond the first outpatient visit.

For additional information pertaining to EMTALA, please go to:

[EMTALA: Understanding Your Obligations and Avoiding Costly Violations](#) [1]

<https://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/> [2]

The information provided in this resource does not constitute legal, medical or any other professional advice, nor does it establish a standard of care. This resource has been created as an aid to you in your practice. The ultimate decision on how to use the information provided rests solely with you, the PolicyOwner.

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