



Center for Clinical Standards and Quality

Admin Info: 24-06-EMTALA

DATE: November 21, 2023

TO: State Survey Agency Directors

FROM: Directors, Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG)

SUBJECT: Emergency Medical Treatment and Labor Act (EMTALA) Pre-Survey Reminders and References

Memorandum Summary

- CMS is committed to ensuring quality and safety in healthcare settings.
- CMS is releasing two Emergency Medical Treatment and Labor Act (EMTALA) pre-survey reminders and references for use by state survey agencies.
- The resources are on the [Quality, Safety, & Education Portal \(QSEP\)](#).

Background:

As part of its commitment to ensuring quality and safety in healthcare settings, CMS is releasing two EMTALA pre-survey reminders and references for use by state survey agencies. Both resources enhance understanding of frequent EMTALA survey topics and highlight applicable parts of the [State Operations Manual](#).

Both resources are available on QSEP under the Hospital (EMTALA) training plan “Useful Links” section.

Contact:

For questions or concerns relating to this memorandum, please contact qsog_qsed@cms.hhs.gov.

Effective Date:

Immediately. Please communicate to all appropriate staff within 30 days.

/s/

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Attachment(s)- EMTALA Tip Sheet Badge Card and EMTALA Tip Sheet Infographic

Resources to Improve Quality of Care:

Check out CMS's new [Quality in Focus](#) interactive video series. The series of 10–15 minute videos are tailored to provider types and aim to reduce the deficiencies most commonly cited during the CMS survey process, like infection control and accident prevention. Reducing these common deficiencies increases the quality of care for people with Medicare and Medicaid.

Learn to:

- *Understand surveyor evaluation criteria*
- *Recognize deficiencies*
- *Incorporate solutions into your facility's standards of care*

See the [Quality, Safety, & Education Portal Training Catalog](#), and select [Quality in Focus](#).

EMTALA PRE-SURVEY REMINDERS



Ensure the **privacy and anonymity** of every complaint

SOM Ch. 5, p. 8-10, 28

Select a **sample of records** for in-depth review

SOM AP. V, p. 8-11 and 18

Get **complete copies of the medical records** for physician medical review

SOM AP. V, p. 11-13

Interview the patients, staff, physicians, witnesses, complainant for a clear picture of the circumstances

SOM AP. V, p. 13

An “appropriate medical screening exam” and definitions of “emergency medical condition” and “to stabilize” under EMTALA are quite different than **common clinical use** of these terms

SOM AP. V, p. 50

EMERGENCY MEDICAL TREATMENT & LABOR ACT (EMTALA)

PRE-SURVEY REMINDERS & STATE OPERATING MANUAL QUICK REFERENCES

GENERAL TIPS & REMINDERS



ENSURE THE PRIVACY AND ANONYMITY OF EVERY COMPLAINANT

The State Operations Manual (SOM) has specific guidance about how to handle cases that are sensitive, attracting media attention, or both. ([SOM Ch. 5](#), p. 8-10, 28)



FOLLOWING THE SOM'S GUIDANCE, SELECT A SAMPLE OF RECORDS

For in-depth review and to document the sample's characteristics and reasons you included these records in your sample. ([SOM Ap. V](#), p. 8-11 and 18)



GET COMPLETE COPIES OF THE MEDICAL RECORDS

For physician medical review (including emergency medical services [EMS] and police reports, hospital admissions records, and records from other hospitals for the same patient for the same episode).

Also, conduct record review and relevant interviews at the receiving hospital, in the case of transfer or movement to another hospital.

Remember there's a statutory requirement for **Quality Improvement Organization** review of these records to determine medical screening examination (MSE) appropriateness, emergency medical condition (EMC) presence, and stabilizing treatment. ([SOM Ap. V](#), p. 11-13)

The CMS location determines, in consultation with CMS medical officers, which records to forward to the quality improvement organization (QIO) for professional medical review. Use the [QIO review checklist](#) to make sure the QIO receives all relevant case information, and gets clinical input from the CMS location CMO. ([SOM Ap. V](#), p. 15)



INTERVIEW THE PATIENT(S),

Staff, physicians, witnesses, complainant, and others for a clear picture of the circumstances, beyond what's recorded in the medical records. Even if none of these people are the original complainant, they can give valuable perspective and evidence. ([SOM Ap. V](#), p. 13)



REQUIREMENTS OF AN APPROPRIATE TRANSFER CAN BE COMPLEX,

So refer to the regulations and SOM for guidance. The risks and benefits certification should be **specific to the patient's condition** upon transfer and may be included on a separate certification form or in the medical record. ([SOM Ap. V](#), p. 57-63)



WHAT CONSTITUTES AN "APPROPRIATE MEDICAL SCREENING EXAM"

And the definitions of "emergency medical condition" and "to stabilize" under EMTALA are **quite different than the common clinical use** of terms like "medical emergency," "unstable," or "stable." ([SOM Ap. V](#), p. 50)

Clinicians might not refer to a person as being "unstable," but that person still **may have an EMC requiring stabilization under EMTALA**. The ultimate clinical outcome isn't a proper basis for finding whether an EMC was stabilized, nor is stabilization defined by a narrow clinical factor, like vital signs alone.

The EMTALA statute and regulations **always refer to stabilization with respect to an EMC**, rather than a patient being stabilized. It's important to gather evidence for a later professional medical review to determine if **"material deterioration of the condition is likely, within reasonable medical probability."**

EXAMPLES OF COMMON CLINICAL SCENARIOS



DISPARATE MEDICAL SCREENING EXAMINATION PROCESSES

The MSE must be **appropriate to the person's presenting signs and symptoms** (a medical determination made by a physician reviewer whether the MSE was "reasonably calculated to determine whether an EMC exists in the context of the specific facts of the case and the hospital's capabilities and policies") and **non-disparate** (the same MSE that the hospital would perform on any person with those signs and symptoms, without regard to payment status, race, national origin, language proficiency, etc.) ([SOM Ap. V](#), p. 36)

The determination of whether an MSE was appropriate for a person's signs and symptoms is independent of any evidence of the hospital's financial motivation or its bad intent.

In other words, **CMS doesn't have to show** why a hospital failed to provide an appropriate MSE (financial reasons or otherwise) to find an EMTALA violation.

A patient's final clinical outcome **isn't a proper basis** for finding whether an appropriate screening was given at the time or whether a person transferred had an EMC that was stabilized. But the **final outcome may be a "red flag"** showing a more thorough investigation is needed.

- **Don't** make decisions based on clinical information that wasn't available at the time of stabilization or transfer. If a person was ultimately misdiagnosed, but the hospital used all of its resources appropriately, a violation of the screening requirement didn't necessarily happen. ([SOM Ap. V](#), p. 36-37)

Review records for other patients with similar signs and symptoms (**selected using SOM guidance**), and use interviews, policy reviews, direct process observation, etc., to help determine whether a disparate MSE process may exist.



PSYCHIATRIC EMERGENCIES

Psychiatric conditions may also meet the EMTALA definition of "emergency medical condition."

To help determine when a psychiatric EMC is stabilized, look for **evidence** the person was **protected and prevented** from injuring or harming him/herself or others and **got treatment** to assure that no material deterioration of the condition was likely, within reasonable medical probability. Administration of chemical or physical restraints alone may help achieve the former but not necessarily the latter.

A hospital has the same obligations under EMTALA, whether or not a patient is in law enforcement custody and/or is under a state-based involuntary legal status, order, hold, or certification. ([SOM Ap. V](#), p. 51 and [QSO-19-15-EMTALA](#))



PREGNANCY EMERGENCIES

Pregnancy-related conditions, even without labor, may also meet the EMTALA definition of "emergency medical condition."

To help determine whether there was an EMC, **look for documentation** the QIO physician reviewer can **use to assess EMC elements**: the health of the person (or unborn child) being in serious jeopardy, serious impairment to bodily organ or part. ([SOM Ap. V](#), p. 12 and [QSO-21-22-Hospitals](#))

