

EMTALA OBLIGATIONS AND THE CORONAVIRUS

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You can't read or watch the news without hearing about the coronavirus disease 2019 ("COVID-19"). As COVID-19 begins to spread to the United States, healthcare providers may start to wonder what their obligations are in treating COVID-19, especially in the emergency department ("ED") of the hospital. On March 9, 2020, the Centers for Medicare and Medicaid Services ("CMS") issued a memo to help provide some guidance on these issues.

The Emergency Medical Treatment and Active Labor Act ("EMTALA") requires Medicare-participating hospitals and critical access hospitals that have a dedicated ED to, at a minimum: (i) provide a medical screening exam to every individual who comes to the ED for examination or treatment for a medical condition to determine if they have an emergency medical condition; (ii) provide necessary stabilizing treatment for individuals with an emergency medical condition within the hospital's capability and capacity; and (iii) provide for transfers of individuals with emergency medical conditions, when appropriate.

What if your hospital does not have sufficient facilities or equipment to meet current state, local, or CDC recommendations when treating suspected or confirmed COVID-19 patients? CMS has stated that hospitals with the capacity and specialized capabilities needed for stabilizing treatment must accept appropriate transfers from hospitals without these capabilities. It is recommended that hospitals coordinate with their state and/or local public health officials regarding appropriate placement and treatment of individuals who meet specified COVID-19 assessment criteria and those with confirmed COVID-19.

CMS will also permit hospitals to set up alternative screening sites on-campus to help separate patients presenting with symptoms of COVID-19. The medical screening exam requirement under EMTALA does not have to take place in the hospital's ED and individuals coming to the ED may be redirected to the alternative sites after being logged in. The process of logging in and redirecting can also take place outside of the entrance to the ED. The alternative screening site on campus *may* be in buildings other than the main hospital building or even in temporary structures, such as tents.

A hospital may also set up a COVID-19 screening site that is not on its campus, if the location remains under the hospital's control. Hospitals and community officials are permitted to encourage the public to go to these sites instead of the hospital for COVID-19 screening. However, a hospital *may not* tell individuals who have already come to its ED to go to the off-site location. Additionally, the hospital must make it clear to the public that it is a screening center for COVID-19 and not a place that provides care for emergency medical conditions in general on an urgent, unscheduled basis.

If during the medical screening exam, the hospital concludes that an individual may be a possible COVID-19 case, the hospital is expected to isolate the patient immediately. Although levels of services provided by the ED vary greatly across the country, it is CMS' expectation that all hospitals are able, within their capability, to provide medical screening exams and initiate stabilizing treatment, while maintaining the isolation requirements for COVID-19 and coordinating with their State or local public health officials. »