



## COVID-19 Guidance

# Waiver of EMTALA Re: Hospital Implementation of Crisis Standards of Care During the COVID-19 Pandemic

This document provides guidance concerning EMTALA's impact on hospital implementation of COVID-19 crisis standards of care related to patient screenings, stabilizations, or transfers. In routine settings, the federal [Emergency Medical Treatment and Active Labor Act](#) (EMTALA) requires Medicare-participating hospitals with emergency departments to screen and stabilize individuals regardless of their insurance status or ability to pay.

However, under [Section 1135 of the Social Security Act](#), the Secretary of Health & Human Services (HHS) can waive certain federal requirements during national emergencies, which negates any requirement for providers to apply for individual waivers. Section 1135 specifically authorizes HHS' Secretary to waive [EMTALA requirements](#) related to issuing sanctions for:

1. redirecting individuals to receive a medical screening examination to alternative locations; and
2. transferring individuals who have not been stabilized.

EMTALA provisions such as signage requirements, patient logging, qualified medical personnel, and on-call lists cannot be waived via blanket waiver. Providers' actions pursuant to lawful waivers can neither discriminate based on an individual's ability to pay, nor redirect or transfer individuals unless necessary under the emergency circumstances.

In response to the COVID-19 pandemic, under HHS Secretary's authorization, the Centers for Medicare & Medicaid Services (CMS) communicated several blanket [waivers](#) of federal laws. These waivers include EMTALA [Section 1867\(a\)](#) regarding medical screening examination requirements. Consequently, hospitals may direct patients to screenings at offsite locations to prevent the spread of COVID-19 (as long as consistent with state or local pandemic plans). EMTALA provisions related to transferring individuals not yet stabilized has not been set aside via blanket waivers and is thus in effect absent explicit hospital-specific waivers.

HHS/CMS waivers took effect on March 1, 2020, and remain in effect until the end of the emergency declaration. HHS most recently [renewed](#) the Covid-19 public health emergency declaration on July 19, 2021, effective for 90 more days (and is anticipated to remain in a state of public health emergency for months longer).



## SUPPORTERS



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This document was developed by **James G. Hodge, Jr., J.D., L.L.M.**, Director, Network for Public Health Law – Western Region Office, and **Rebecca Freed**, Senior Legal Researcher, Center for Public Health Law, Sandra Day O'Connor College of Law, Arizona State University. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

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