

## **Update on EMTALA Enforcement**

**Richard P. Kusserow | June 2024**

### **Key Points:**

- CMS announced a new option for reporting violations
- Tips for Compliance Officers

The [Emergency Medical Treatment and Active Labor Act](#) (EMTALA) remains one of the high-risk areas identified by the OIG in its compliance guidance. CMS also continues its commitment to quality health care services protected by EMTALA. They announced creating a new option on their website for individuals to be able to report suspected violations. It is hoped that this will encourage and facilitate reporting problems. EMTALA was designed to guard against “Patient Dumping,” by prohibiting hospitals from denying emergency care to patients and ensuring their access to appropriate emergency medical services. Medicare-participating hospitals are required under EMTALA to provide medical screening exams for individuals arriving at hospital emergency departments to determine if the person has an emergency medical condition (EMCs). If an emergency medical condition is confirmed, hospitals must provide stabilizing medical treatment (or, if unable to stabilize the person within their capability, appropriately transfer the patient). They must ensure that (1) all patients who come to the hospital with an emergency medical condition, or are in active labor, receive an appropriate medical screening examination; (2) patients with an emergency medical condition are stabilized; (3) patients requiring or requesting a transfer are transferred appropriately; (4) the Emergency Department tracks those physicians that are on call to provide necessary treatment; and (5) through adequate signage, ensure that all patients have the opportunity to review their right to a medical screening examination and stabilization for an emergency medical condition.

Violations may result in monetary penalties of not more than \$50,000 for each violation. Most EMTALA cases continue to be resolved through settlement agreements with the OIG and involve refusals to accept in their emergency department the appropriate transfer of patients or failures

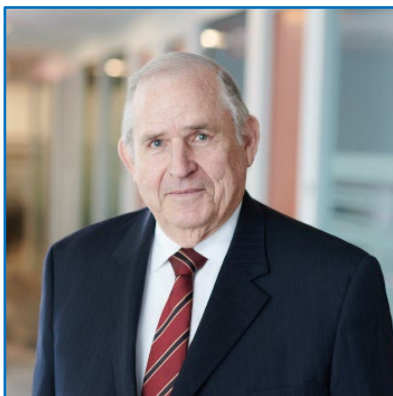
to provide adequate medical screening and stabilization of patients. It is important to ensure transfer paperwork is audited to confirm all transfers of individuals with unstabilized EMCs are initiated either by a written request for transfer or a physician certification regarding the medical necessity for the transfer.

**Compliance Officers should ensure the EMTALA high-risk area is being addressed through ongoing monitoring and auditing. This should include ensuring:**

1. Policies/procedures specifically address EMTALA compliance
2. Specialists are on staff to screen and stabilize emergency patients
3. Policies prohibit retaliation against whistleblowers who make reports
4. Staff members are not requesting payment prior to screening patients
5. A method exists to internally report (e.g., hotline) and address potential violations
6. The central log is maintained for disposition and compliance with legal requirements
7. The facility has established a transfer request log to capture necessary information
8. Physician on-call list reflects coverage of services available to inpatients
9. Triage is being performed properly and patients are directed to it
10. Treatment is not delayed for registration
11. Physicians are presenting themselves timely when called

For more information on this subject, contact the author, Richard Kusserow at [rkusserow@strategicm.com](mailto:rkusserow@strategicm.com).

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#### **About the Author**

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.