

Tips for Addressing EMTALA Compliance

Richard P. Kusserow | July 2024

EMTALA evolved from the 1946 Hill-Burton Free Care Program to provide federal grants to hospitals for modernization in return for providing uncompensated services without consideration as to race, color, creed, national origin, or ability to pay and continues today with the same non-discrimination principles, which protect against “patient dumping.”

EMTALA imposes legal obligations on hospitals to 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 (or not more than \$25,000 for hospitals with less than one hundred beds) for each violation. It is one of the enumerated high-risk areas identified by the OIG in their compliance guidance documents.

The organization, structure, and management vary considerably among hospitals in how they address EMTALA requirements. This adds to the complexity and difficulties of proper auditing and monitoring, involving several departments. The issue areas are also varied in that they include hospital emergency department capabilities and capacity, central log management, qualifications of medical personnel, physician on-call list, processes for addressing signage and stabilization, admissions and transfer procedures, addressing patient walkouts, claims submissions, etc. As such, when planning to oversee this high-risk area, it is important to bring together expert resources to ensure proper coverage. EMTALA cases suggest the areas of regulatory enforcement of most interest to the federal government.

Based on what is known from past cases, compliance officers should consider the following:

- Ensuring that the departments affected by EMTALA regulations have ongoing monitoring of this risk area to ensure that they keep current with changing rules in their operating policies, have proper training of their staff on this written guidance, and verify that everyone is adhering to them.
- As part of ongoing auditing, periodically review all EMTALA-related policies and procedures to ensure they adequately address legal/regulatory requirements; identify any gaps that create a risk of noncompliance; verify they are being followed; and validate they are achieving the desired outcome. It is critical for hospitals to adopt solid compliance policies and procedures.
- Ensuring appropriate medical screening procedures are applied uniformly to all people presenting themselves in the emergency department with similar symptoms. In other words, hospitals would have to demonstrate that all patients were treated uniformly.
- Verifying that the hospital actually provides appropriate medical screening and follows their standards and policies; and validating that the written guidance is effective in ensuring compliance with EMTALA.

For more information on this subject, contact the author, Richard Kusserow, at 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.