



**EMTALA REQUIREMENTS AND OPTIONS
FOR HOSPITALS IN A DISASTER**

Hospital Clients
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This Client Alert is intended to update our hospital clients regarding a Fact Sheet (the "Fact Sheet") recently circulated by the Center for Medicare and Medicaid Services ("CMS") to its State Survey Agency Directors to assist hospitals and their communities in meeting their obligations under the Emergency Medical Treatment and Labor Act ("EMTALA"), in the event of a surge in emergency department ("ED") volume related to H1N1 influenza.¹ The Fact Sheet also identifies certain situations in which waivers may be granted to authorize hospitals to take actions not normally permitted by EMTALA.

I. ACTIONS THAT MAY BE TAKEN WITHOUT WAIVERS

The Fact Sheet provides that, in the event of an H1N1 outbreak, a hospital may arrange to conduct the medical screening exams required by EMTALA at sites other than in the hospital's ED, and the hospital does not need an EMTALA waiver or other special authorization to do so. Hospitals will be afforded the flexibility to establish alternative screening sites at other sites on the hospital's campus (the "On Campus Screening Sites") or at off-campus sites controlled by the hospital (the "Off Campus Screening Sites"). Communities may also establish screening clinics at sites not controlled by the hospital (the "Community Sites"). All such alternative locations must be staffed by personnel trained to evaluate individuals infected with H1N1 influenza. The rules applicable to these alternative screening sites vary, as follows:

1. Hospital On Campus Screening Sites

Individuals who come to a hospital's ED may be redirected to an On Campus Screening Site. EMTALA obligations apply, however, with respect to such individuals, so if the individual receives a screening that reveals an emergency medical condition (within the meaning of EMTALA), the hospital must treat and stabilize the individual within its capability, in the ED or elsewhere in the hospital if necessary, or transfer the individual to a hospital that has the capability and capacity to stabilize the individual's condition.

¹ The Fact Sheet may be accessed at http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter09_52.pdf.

2. *Hospital Off Campus Screening Sites*

Individuals who come to a hospital's ED may *not* be redirected to an Off Campus Screening Site. The hospital and its community, however, may encourage the public to go directly to an Off Campus Screening Site in lieu of the hospital ED to be screened for H1N1 influenza. In such cases, EMTALA obligations do not apply with respect to individuals who receive screenings at Off Campus Screening Sites. The Fact Sheet provides, however, that if an individual who comes to an Off Campus Screening Site needs medical attention on an emergent basis, the hospital is required, under the Medicare Conditions of Participation, to arrange for referral to the hospital or transfer to another hospital. Consequently, CMS encourages hospitals to coordinate with local emergency medical services to arrange transport for individuals in need of emergent care.

3. *Community Screening Sites*

Individuals who come to a hospital's ED may *not* be redirected to a Community Screening Site. Like Hospital Off Campus Screening Centers, the hospital and its community, however, may encourage the public to go directly to a Community Screening Site in lieu of the hospital's ED to be screened for H1N1 influenza. CMS also encourages communities to plan for referral and transport of individuals needing additional medical attention on an emergent basis.

II. ACTIONS THAT REQUIRE WAIVERS

A hospital does not need an EMTALA waiver to establish and utilize any of the foregoing alternative screening sites. The Fact Sheet provides further, however, that, in certain situations, a hospital may obtain EMTALA waivers to authorize the hospital to (i) direct or relocate individuals who come to the ED to an Off Campus Screening Site, in accordance with a State emergency or pandemic preparedness plan; or (ii) transfer individuals affected by non-stabilized emergency medical conditions (normally prohibited by EMTALA) as necessary under the circumstances.

As indicated, however, EMTALA waivers are issued only when certain specific requirements have been satisfied, including, among other things, formal declarations of emergency by the President and the DHHS Secretary. Moreover, such waivers last only for prescribed periods; in the case of a public health emergency involving pandemic infectious disease, a waiver would be effective only until the necessary declarations of emergency terminate.