

EMTALA Resources and References.

Statute, Regulations, and Government Interpretive Guidelines.

1. 42 USC 1395dd (EMTALA statute)
2. 42 CFR 489.24; 42 CFR 489.20 (EMTALA regulations)
3. 68 Fed. Reg. 53,221-53264 (2003): the new final EMTALA regulations on EMTALA published by CMS in the Federal Register on September 9, 2003. The new regulations became effective November 10, 2003. A copy of the new EMTALA rules can be found through the Federal Register Online GPO Access at: http://www.access.gpo.gov/su_docs/fedreg/a030909c.html under "Separate parts in this issue."
4. CMS's Interpretive Guidelines (issued in May 2004) for state surveyors and CMS regional offices regarding the enforcement of EMTALA under the new regulations is available on line at <http://www.cms.hhs.gov/medicaid/survey-cert/letters.asp>.
5. Florida's 'EMTALA' equivalent laws: Fla. Stat. 395.1041; Fla. Admin. Code Annotated (FAC) 59A-3.207.

Government Advisory Bulletins and Other Government EMTALA Publications.

6. HHS/CMS Program Memorandum #S&C-02-34, "On-Call Requirements - Q&A", June 13, 2002. Letter from Steven A. Pelovitz, Director, CMS Survey and Certification Group; HHS/CMS Program Memorandum #S&C-02-35, "Simultaneously On-Call", June 13, 2002. Letter from Steven A. Pelovitz, Director, CMS Survey and Certification Group. These two publications were the basis for the government's new regulations and interpretive guidelines related to the on-call issues.
7. GAO Report on the impact of EMTALA on hospital emergency departments, the delivery of emergency care, and HCFA/OIG enforcement, June 22, 2001. Available on the internet at www.gao.gov/new.items/d01747.pdf. Very interesting reading; chronicles the ramifications of the law for emergency departments.
8. Department of Health and Human Services OIG/HCFA Special Advisory Bulletin on the Patient Anti-Dumping Statute. 64 Fed. Reg 61353 (November 10, 1999). Deals with the financial issues related to EMTALA and recommends 'best practices' for dealing with managed care insurance companies. This memo formed the basis of many of the new regulations and interpretive guidelines.

9. DHHS Office of Inspector General, EMTALA: Survey of Hospital Emergency Departments, OEI-09-98-00220, January 2001; and DHHS Office of Inspector General, EMTALA: The Enforcement Process, OEI-09-98-00221, January 2001. These two government studies documented the lack of knowledge of the law by hospital administrative and clinical staff and the inconsistent and inaccurate enforcement of the law by CMS.

Comprehensive Resources on EMTALA

10. Bitterman RA. **Providing Emergency Care Under Federal Law: EMTALA.** Published by the American College of Emergency Physicians in January 2001 (available at 1-800-798-1822, touch 6, or on ACEP's web site at www.acep.org/bookstore.) Now in 2nd printing. Additionally, a supplement addressing the impact of the new EMTALA regulations effective November 10, 2003 is available at the web site, and may be downloaded for free.
11. Stiller JA. EMTALA: A Comprehensive Guide to the Emergency Patient Screening and Transfer Law. American Health Lawyers Association 2004. Written more from the hospital perspective than the physician perspective.
12. Joy L M. EMTALA: Interpreting and Complying With the Federal Transfer Law. American Health Lawyers Association 1999.
13. Frew, Steven. EMTALA web site at www.medlaw.com. Great source of up to date information.
14. Advisory Board. Call Coverage Strategies: Securing Physician On-Call Cooperation. Published by The Advisory Board Co., Washington D.C., January 2003.

The Advisory Board Company interviewed experts from across the country concerning the on-call issues and incorporated the best ideas available. Unlimited copies of the publication are available free to Advisory Board members. Most hospitals are members and may be helpful in obtaining extra copies. Copies may also be available to non-members by request. Contact: Delivery Services via phone: (202) 266-5920; e-mail: orders@advisory.com; or internet web site at <http://advisory.com>.

Articles of Interest to Emergency Physicians on EMTALA

15. Zibulewsky J. Medical staff knowledge of EMTALA at a large, tertiary-care hospital. Am J Emerg Med 2003;21:8-13.

16. Kuettel AC. The changing role of receiving hospitals under the EMTALA. *J of Legal Med* 1998;19:351- 376.
17. Derlet RW, Hamilton B. The impact of HMO care authorization policy on an ED before California's new managed care law. *Acad Emerg Med* 1996; 3:338-344.
18. Bitterman RA. Emergency Department Authorization for Health Maintenance Organizations? Just Say No!, *Acad Emerg Med* 3(12):1172-1175, 1996.
19. Stieber JM and Spar LJ. EMTALA in the 90's—Enforcement Challenges. *Health Matrix* 1998;8(1):57-82.
20. Dame LA. EMTALA: The Anomalous Right to Health Care. *Health Matrix* 1998;8:3-28.
21. Whitmore M R and Andresen J S. Decisions of the Supreme Court and DHHS Continue to Expand Hospital Liability Under EMTALA. *The Health Lawyer* 1999;11(3):14-19.
22. American Medical Association - Organized Medical Staff Section. EMTALA Quick Reference Guide For On-Call Physicians. Published summer of 2000 by the AMA.
23. Freedman DL. EMTALA Update 2000: 'Coming to the ED'. *ED Legal Letter* 11(12):129-140; 2000 December.
24. Wanerman R. The EMTALA Paradox. *Ann Emerg Medicine* 2002;40:464-469.
25. Bitterman RA (Editorial). Explaining the EMTALA Paradox. *Ann Emerg Medicine* 2002;40:470-475.
26. Gionis TA, Camargo CA Jr, Zito AS Jr. The intentional tort of patient dumping: A new state cause of action to address the shortcomings of the federal Emergency Medical Treatment and Active Labor Act (EMTALA). *Am Univ Law Review* 2002; 52: 173-308.

Key Court Decisions Interpreting EMTALA

27. *Burditt v. US Dept. of HHS*, 934 F.2d 1362 (5th Cir. 1991).
28. *Roberts v. Galen of Virginia, Inc.*, 111 F.3d 405 (6th Cir. 1997), 119 S.Ct. 685 (1999) decided January 13, 1999. US Supreme Court Case concerning EMTALA.
29. *Millard v. Corrado*, No. ED 75420, E.D. Missouri Court of Appeals, Dec. 14, 1999. (Every on-call physician should read this case and the St. Anthony Hospital case.)

30. Inspector General v. St. Anthony Hospital, DAB Docket No. C-98-460 / Decision No. CR620 (Dep't. Health and Human Services, Departmental Appeals Board, Civil Remedies Div., Oct. 5, 1999); St. Anthony Hospital v. Inspector General, DAB App. Div. No. A-2000-12 / Decision No. DAB1728, June 5, 2000; St. Anthony Hospital v. United States Department of Health and Human Services, No. 00-9529, United States Court of Appeals for the Tenth Circuit, 2002 U.S. App. LEXIS 17867 (August 28, 2002).
31. Bryant v. Adventist Health System, 289 F.3d 1162 (9th Cir. 2002), and Harry v. Marchant, 291 F.3d 767 (11th Cir. 2002) - two cases where US appellate courts refused to apply EMTALA to inpatients.
32. Inspector General v. Samuel T. Bowen, MD, Department of HHS, DAB Docket No. C-98-233, Decision No. CR618 (September 29, 1999); & Inspector General v. Bowen, Department of HHS, DAB Docket No. A-2000-7 CR618, Decision No. DAB1720 (March 23, 2000). [Both cases can be viewed and downloaded from the HHS appeals board web site at <http://www.hhs.gov/progorg/dab/>, then click on 'decisions' and search for 'bowen'.] The OIG charged Dr. Bowen, an emergency physician in North Carolina, with violating the law and sought to terminate him from participating in Medicare and fine him \$50,000.
33. Inspector General v. Cherukuri, Department of HHS, DAB - CR475 (May 23, 1997), Cherukuri v. Shalala, No.97-4464 1999 FED App. 0160P (6th Cir.) (May 3, 1999).
34. Arrington v. Wong, 237 F.3d 1066 (9th Cir. 2001), overturning the district court's ruling in Arrington v. Wong, 19 F.Supp.2d 1151 (D. Haw. 1998). Ambulance diversion case and ramifications under EMTALA. Increases the liability of hospitals related to ambulance diversion. Only applicable on the west coast; no other federal circuit courts apply the holding of the 9th circuit.

Psychiatric Emergency Care and EMTALA

35. Quinn DK, Geppert CMA, Maggiore WA, The Emergency Medical Treatment and Active Labor Act of 1985 and the Practice of Psychiatry. Psychiatric Services 2002;53:1301-1307.
36. Bitterman RA. Special Considerations: Obstetrical and Psychiatric Patients. Chapter in **Providing Emergency Care Under Federal Law: EMTALA**, published by the American College of Emergency Physicians. January 2001. Separate section of the book dealing specifically with the issues related to the examination, treatment, and transfer of psychiatric patients. (The new regulations of November 2003 did not change the law or specifically address psychiatric issues in any way.)

37. Schlesinger M, Dorwart R, Hoover C, and Epstein S. "The Determinants of Patient Dumping: A National Study of Economically Motivated Transfers Involving Mental Health Care." *Health Services Research* 1997;(5): 32.
38. Mathis T, Leach TN, and LeFevre C. Legal Issues of Emergency Psychiatric Patients: The Application of EMTALA and State Civil Commitment Laws. *J Health and Hospital Law* 1996;29 (5): 257-267.
39. Bitterman, RA. Screening, Stabilization, and Transfer of Psychiatric Patients. *Emergency Department Legal Letter* 1998;9(10);97-104, October.
40. Annas GJ. The last resort - the use of physical restraints in medical emergencies. *NEJM* 1999;341:1408-1412.
41. Vernaglia LW & Cronin FJ. Patient's Rights: HCFA issues new conditions of participation for hospitals. *Health Law Digest*. 1999;27(9):15-20, September 1999.
42. 42CFR 482.13(e), and (f). Medicare Conditions of Participation regarding restraints and seclusion (1999).