

AAEM Young Physicians Section

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"Ask The Expert" is a Common Sense feature where subject matter experts provide answers to questions provided by YPS members. This edition features a leading authority on EMTALA compliance, Stephen A. Frew, JD, Vice President-Risk Consultant, Johnson Insurance Services, LLC, of Madison, Wisconsin.

Question: What are the most important aspects of the Emergency Medicine Treatment and Labor Act (EMTALA) that a young emergency physician needs to understand?

(Submitted by Michael A. Bohrn, MD FAAEM FACEP, Associate Residency Program Director, Clinical Assistant Professor, Department of Emergency Medicine, York Hospital, York, PA)

Answer: EMTALA has numerous critical issues for compliance, but among the most important issues for new physicians to understand are these eight points:

1. EMTALA is an arbitrary government regulation -- logic or standard of care have nothing to do with it. It is like the IRS code -- the rules are the rules, and all of your logic and good intentions will not help a bit. Compliance is not optional or a matter of medical judgment or practice style.
2. EMTALA utilizes similar words to medical terms, but the definitions are entirely different. For instance, the EMTALA term "emergency medical condition" has a much broader definition than the medical term "medical emergency" or "emergent." A patient has an emergency medical condition until all standard procedures for evaluating the patient prove they do not have one of the specifically defined conditions included in EMTALA and they are not at risk to deteriorate from or during transfer or following discharge. Forget the medical definition -- learn the legal definitions and how they are applied by the regulators.
3. EMTALA compliance is a "full contact sport." ED physicians must be the patient advocate at all times, but that often puts the ED physician in a juggling act with conflicting demands from hospital administration, third party payers and general medical staff versus EMTALA regulations. ED physicians are often casualties in the process.
4. Good care alone does not count under EMTALA -- you have to comply and give good care, but you also have to clearly document all elements of your compliance. An omitted element, signature or blank check box can result in a citation. Illegible entries don't count. Reliance on check box systems is helpful but is not sufficient. Federal courts have stated that the record must reflect a narrative that describes the physician's evaluation, thought processes and plan of care -- always write or dictate a summary paragraph on even the most minor of cases. Always issue written discharge instructions that are legible and in lay language, and have a signed copy of the full form in the record -- good discharge instructions will often save you from gaps in the ED record.
5. Never forget that you are the physician with eyes on the patient. Do not let a private attending or consultant talk you out of the need for admission or evaluation over the phone. You will always live to regret it -- but your patient may not. The same doctor who told you to send the patient home will be the first to say that it is your fault BECAUSE you sent the patient home.
6. Expect professional standards of your ED nurses, but treat them with professionalism and respect -- some day they will be in the position to save you from a terrible mistake or a simple compliance oversight that could make your life miserable. Will they want to save you?
7. Not everything is EMTALA. You will often be told that something "violates EMTALA" and often it is pure fiction or intentional deception. Know the rules so you don't get jerked around.
8. Head pain, belly pain, frequent visits to the ED, possible drug seeking conduct, intoxicated patients, suicide gestures and psych patients are ALL high risk for EMTALA violations.

There are many more concerns to EMTALA compliance, but getting these eight areas under control will go a long way toward reducing the EMTALA risk to the ED physician.

Mr. Frew's website at www.medlaw.com features current information on EMTALA and other medical-legal and risk management issues. His latest book on EMTALA compliance is the *EMTALA Field Guide* (www.emtalafieldguide.com).

The views expressed in this article are those of the authors and do not necessarily reflect the official policy or position of the Department of the Navy, Department of Defense, nor the U.S. Government.

If you have a question that you would like to have answered by an expert in a future issue of *Common Sense*, please send it to jschofer@gmail.com.