

# Telemedicine in the Emergency Department and EMTALA Compliance

## IN SHORT

**The Situation:** Telemedicine services are a viable option for many hospital emergency departments attempting to expand the reach of their services and provide wider access to care.

**The Action:** As more hospitals consider the telemedicine opportunity, implementing certain policies can ensure Emergency Medical Treatment and Labor Act compliance.

**Looking Ahead:** With appropriate planning and adherence to specific operating guidelines, hospitals can effectively use telemedicine to broaden access to emergency services while remaining compliant.

Although enacted more than 30 years ago, the Emergency Medical Treatment and Labor Act ("EMTALA") remains aggressively enforced and important for Medicare-participating hospitals to consider as they implement telemedicine services in the emergency department ("ED") setting.

Among other things, EMTALA requires hospitals to: (i) provide an appropriate medical screening examination; (ii) stabilize a patient with an emergency medical condition; and (iii) provide timely consultation, treatment, and hospitalization for a patient with an emergency medical condition.

In order to achieve these mandates for a wider variety of patients, many hospitals and EDs have implemented telemedicine services for conditions such as stroke, myocardial infarction, neonatal resuscitation, radiology services, dermatologic conditions, and more. Indeed, some critical access hospitals that have difficulty recruiting an adequate physician workforce use telemedicine to provide the entire range of emergency services in conjunction with on-site mid-level providers.

But, as hospitals expand emergency telemedicine services, it is important to implement policies and safeguards to ensure ongoing EMTALA compliance.

Hospitals that use, and entities that provide, telemedicine services in the ED setting should consider a number of policies to ensure EMTALA compliance:

- The receiving hospital must credential each physician who will be providing telemedicine services to its patients, which includes ensuring that each physician is licensed in the state where the receiving hospital is located.
- The receiving hospital should consider whether to include telemedicine physicians on EMTALA-mandated on-call lists, keeping in mind that this is *not* a requirement and may not be the optimal solution for either receiving hospitals or telemedicine providers.
- Telemedicine providers should carefully consider potential liability associated with how the receiving hospital chooses to meet its EMTALA-mandated on-call requirements.
- Telemedicine providers and receiving hospitals should develop agreements that carefully outline the nature and degree of services that telemedicine providers will make available to receiving hospitals.
- Receiving hospitals should document a backup plan if the telemedicine physician becomes unavailable or the telemedicine platform fails.
- Receiving hospitals should carefully evaluate appropriate signage and advertisements related to the telemedicine emergency services.
- Telemedicine providers and receiving hospitals must consider additional EMTALA-related obligations if telemedicine services are provided by physicians who could have simultaneous on-call or other clinical duties at multiple hospitals.

All said, as long as certain steps are taken, hospitals looking to expand access to emergency services by implementing telemedicine platforms may do so while maintaining compliance with EMTALA and its various mandates.

### THREE KEY TAKEAWAYS

1. Many hospital emergency departments have introduced telemedicine services for stroke, myocardial infarction, neonatal resuscitation, and other conditions.
2. Entities providing telemedicine services must adhere to EMTALA requirements.
3. Policies pertaining to physician licensing, on-call lists, liability, backup plans, and similar matters should be implemented to meet compliance obligations.

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