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A Guide to EMTALA

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PATHFINDER: A Guide to EMTALA

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Legal Research
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Fall 2023

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II. Purpose & Intended Audience

This Pathfinder research guide provides an overview of the Emergency Medical Treatment and Labor Act (EMTALA). This guide is intended for both attorneys in the field and hospital compliance departments. It is essential for attorneys to understand both the requirements of an EMTALA claim and the circuit splits on interpretation. Hospital compliance departments have an interest in understanding EMTALA for preventative and response measures.

This guide walks the researcher through a brief background on EMTALA and how to research the federal statute using primary, secondary, and news-based sources. The goal is to equip them with the necessary tools to perform robust research on an EMTALA issue. It seeks to incorporate both Subscription Services and Free Resources. Hyperlinks are used throughout the pathfinder in addition to a description of how to find a particular source or general search results.

Subscription Services	Free Resources
Westlaw Precision	Google Scholar
Lexis+	Cornell Legal Information Institute
Bloomberg Law	SSRN (free membership)
HeinOnline	Local Government Agencies, such as State Health Departments
ProQuest	Centers for Medicare and Medicaid Services
	Congress.gov
	U.S. Government Accountability Office

Legislative Intent Behind the Implementation of EMTALA

EMTALA was enacted in 1986 as part of the Comprehensive Omnibus Budget Reconciliation Act of 1986 (COBRA).¹ This federal statute is sometimes called the Hill-Burton Act/Anti-Dumping Act.² Congress intended to discourage patient-dumping, a practice of refusing to treat patients who have no ability to pay.³ It was not intended as a federal malpractice statute.⁴ “EMTALA was not designed or intended to establish guidelines or standards for patient care, provide a suit for medical negligence, or substitute for a medical malpractice claim.”⁵ It was “to provide an adequate first response to a medical crisis for all patients and send a clear signal to the hospital

¹ Melissa K. Stull, Annotation, *Construction and application of Emergency Medical Treatment and Active Labor Act* (42 U.S.C.A. § 1395dd), 104 A.L.R. Fed. 166 (1991).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

community that all Americans, regardless of wealth or status, should know that a hospital will provide what services it can when they are truly in physical distress.”⁶

Elements of an EMTALA Claim

The plaintiff must show the following to establish an EMTALA violation:⁷

1. The Hospital is a participating hospital, covered by EMTALA, that operates an emergency department.
2. Patient arrived at the facility seeking treatment.
3. The hospital either
 - a. Did not afford the patient an appropriate medical screening to determine if they had an emergency medical condition or
 - b. If they determined that an emergency medical condition existed, hospital failed to stabilize the patient prior to discharge or transfer to another facility.

Courts have determined that actions for violation of EMTALA may be pursued in federal court.⁸

The damages available to a harmed plaintiff with a successful EMTALA claim are “those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.”⁹

The main elements to keep in mind while researching EMTALA and circuit interpretation are:

1. [Failure to Appropriately Screen](#)
2. [Failure to Stabilize Emergency Medical Condition](#)

EMTALA Statute Definitions (42 U.S.C.A. § 1395dd(e))

Term	Definition
“Emergency medical condition”	(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in— <ul style="list-style-type: none">• placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,• (ii) serious impairment to bodily functions, or• (iii) serious dysfunction of any bodily organ or part; or (B) with respect to a pregnant woman who is having contractions— <ul style="list-style-type: none">• that there is inadequate time to effect a safe transfer to another hospital before delivery, or• (ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 42 U.S.C. § 1395dd(d)(3)(A).

“participating hospital”	hospital that has entered into a provider agreement under section 1866 [42 U.S.C.A. § 1395cc]
“to stabilize”	with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result or occur during from the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta).
“stabilized”	with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta).
“Transfer”	movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (A) has been declared dead, or (B) leaves the facility without the permission of any such person.
No delay in examination or treatment	A participating hospital may not delay provision of an appropriate medical screening examination required under subsection (a) or further medical examination and treatment required under subsection (b) in order to inquire about the individual's method of payment or insurance status.

III. How to Research EMTALA

It is beneficial in the research process to classify sources as primary or secondary law. The following steps take the researcher through the available subscription services and free resources.

Primary Law

Primary authority “come[s] directly from a legislature, a court, or another body with official capacity to issue or clarify rules for its jurisdiction.”¹⁰ It is binding in nature and therefore the most persuasive. Primary sources may include Constitutions, statutes, codified regulations, and case law.¹¹

Federal Statutes:

“A statute is a written law enacted by a legislature.”¹² Statutes passed by Congress and state legislatures are key for the research process.

¹⁰ *Primary Authority*, CORNELL LEGAL INFO. INST., https://www.law.cornell.edu/wex/primary_authority (last visited Nov. 19, 2023).

¹¹ PAUL D. CALLISTER, *FIELD GUIDE TO LEGAL RESEARCH* 68 (2019).

¹² GEORGETOWN, <https://guides.ll.georgetown.edu/statutes> (last visited Nov. 19, 2023).

The official, unannotated code is the United States Code.¹³ The U.S. Code arranges laws by subject, rather than chronologically.¹⁴ It contains fifty-four titles, which are large topical groupings.¹⁵ To better assist in your research process, it is advantageous to use annotated codes. The annotated version includes the language of the statute paired with cross-references to cases, secondary sources, statutes, and other helpful sources.¹⁶

Tip: If you did not know the statute citation for EMTALA, the popular name table could be used to find the statute. This feature allows you to find a statute based on a common or popular name for the statute.

Westlaw Edge: <https://1.next.westlaw.com> → Statutes → United States Code Annotated → Choose Popular Name Table under Tools & Resources on the right side column → Select “E” → Select “Emergency Medical Treatment and Active Labor Act (Emtala)” → USCA Classification: 42 USCA § 1395dd

The statute for EMTALA is 42 U.S. Code § 1395dd - Examination and treatment for emergency medical conditions and women in labor.

Specifically, EMTALA is found in the U.S. Code Title 42 (The Public Health and Welfare), under Chapter 7 (Social Security), Subchapter XVIII (Health Insurance for Aged and Disabled), Part E (Miscellaneous Provisions), Section 1395dd Examination and treatment for emergency medical conditions and women in labor.¹⁷

¹³ Mindy Kent, *Statutes: US and State Codes*, HARVARD (Sep. 12, 2023), <https://guides.library.harvard.edu/law/statutes>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 42 U.S. Code § 1395dd, CORNELL LEGAL INFO. INST., <https://www.law.cornell.edu/uscode/text/42/1395dd> (last visited Nov. 19, 2023).

Pathway to EMTALA: 42 U.S. Code § 1395dd

Subscription Services:

Bloomberg: <https://bloomberglaw.com/start> → Scroll Down to "Popular Links" and Select "All Legal Content" → Enter into the Key Word Box "§ 1395dd. Examination and treatment for emergency medical conditions and women in labor" & Check the Box for "Combined U.S. Sources" & Click Search → Under the Content Types Box on the left hand side, Select "Codified Statutes" → Narrow under Filters by Federal → 42 U.S.C. § 1395dd. Examination and treatment for emergency medical conditions and women in labor

Lexis+: <https://plus.lexis.com/zhome> → Statutes & Legislation Keyword Search → All Federal → Search "§ 1395dd" → Click "Filter" on the far left & Select "Statutes and Legislation" → 42 U.S.C. § 1395dd. Examination and treatment for emergency medical conditions and women in labor

Westlaw Edge: <https://1.next.westlaw.com> → Type "EMTALA" into Search Bar → Narrow by Content Types: "Statutes & Court Rules" → 42 U.S.C. § 1395dd. Examination and treatment for emergency medical conditions and women in labor

You can also access The Emergency Medical Treatment and Labor Act (EMTALA) for free at Cornell's Legal Information Institute: <https://www.law.cornell.edu/uscode/text/42/1395dd>. Search in the Google Search Engine: 42 USCS § 1395dd → See Legal Information Institute 42 U.S. Code § 1395dd.

Research By State

While EMTALA is federal law, if your research is state specific, you should narrow your search by state. Subscription resources efficiently enable this process. These services provide both primary and secondary sources filtered by state.

Westlaw Precision: <https://1.next.westlaw.com> → Click the option box within the Search Bar & Select the applicable State(s) → Click Save **OR** Type your Search Terms in the Search Box → Click Search → Filter by State

Lexis+: <https://plus.lexis.com/zhome> → Click the Drop Down next to "All Jurisdictions" → Check applicable State(s) **OR** Type your Search Terms in the Search Box → Click Search → Filter by State

If you do not have access to a subscription service, you may use the applicable state's Department of Health website. Simply run a google search: "applicable state EMTALA" and select the department of health site. Here you will most likely find resources either citing the Centers for Medicare & Medicaid Services (CMS) or a direct link to the www.cms.gov website.

Circuit Split

While EMTALA is federal law, if your research is circuit specific, you should narrow your search by circuit.

Westlaw Precision: <https://1.next.westlaw.com> → Click the Box within the Search Bar & Select the relevant Circuit(s) → Click Save **OR** Type your Search Terms in the Search Box → Click Search → Filter by Circuit

Lexis+: <https://plus.lexis.com/zhome> --> Click the Drop Down next to “All Jurisdictions” → Check relevant Circuit(s) **OR** Type your Search Terms in the Search Box → Click Search → Filter by Circuit

Federal circuit courts are split on their interpretation of the federal statute. The following tables outline some prominent discrepancies in interpretation by circuit.

Circuit Split: Screening Requirement: What constitutes “appropriate” medical screening?¹⁸

Standard:	Circuits	What the Standard Entails:
<u>Minority View:</u> Objectively Reasonable Standard	1 st and 9 th Circuits	“[a] hospital fulfills its statutory duty to screen patients in its emergency room if it provides for a screening examination reasonably calculated to identify critical medical conditions that may be afflicting symptomatic patients & provides that level of screening uniformly to all those who present substantially similar complaints” ¹⁹
<u>Majority View:</u> Subjective Standard: Nondisparate Treatment Standard	Particularly 6 th , 8 th , 10 th , 11 th , & D.C. Circuits	EMTALA “does not require a hospital to provide a medical screening in the abstract, but one that is appropriate within the capability of the hospital’s emergency department, including ancillary services routinely available to the emergency department.” “[T]he statute’s requirement is hospital-specific, varying with the specific circumstances of each provider.” ²⁰

Circuit Split: Screening Requirement: Is there a “motive” requirement?²¹

Circuit	Case	“Motive” Requirement Interpretation
6 th Circuit	Cleland v. Bronson Health Care Group, Inc. (1990)	Court must examine the hospital’s motivation for its actions: “If [the hospital] acts in the same manner as it would have for the usual paying patient, then the

¹⁸ Victoria K. Perez, Comment, *EMTALA: Protecting Patients First By Not Deferring to the Final Regulations*, 4 SHCR 149, 162-166 (2007).

¹⁹ *Correa v. Hosp. San Francisco*, 69 F.3d 1184, 1192 (1st Cir. 1995).

²⁰ *Repp v. Anadarko Mun. Hosp.*, 43 F.3d 519, 522 (10th Cir. 1994).

²¹ *Elmhirst v. McLaren N. Mich. Hosp.*, 726 Fed. Appx. 439 (6th Cir. 2018), petition for cert. denied, FINISH CITE

		screening provided is ‘appropriate’ within the meaning of the statute”
10 th Circuit	Phillips v. Hillcrest Med. Ctr. (2001)	“[t]his circuit like many others, does not require any particular motive for EMTALA liability to attach...EMTALA looks only at the participating hospital’s actions, not motives.”
1 st Circuit	Correa v. Hospital San Francisco (1995)	“[E]MTALA does not imposes a motive requirement”
4 th Circuit	Power v. Arlington Hospital Assn. (1994)	“having to prove the existence of an improper motive on the part of a hospital, its employees or its physicians, would make a civil EMTALA claim virtually impossible”
5 th Circuit	Burditt v. U.S. Dept. of Health & Human Serv. (1991)	“motive” requirement “[is] found nowhere in the statute”
8 th Circuit	Summers v. Baptist Med. Ctr. Arkadelphia (1996)	“the statute contains no...requirement [of improper motivation]”
D.C. Circuit	Gatewood v. Washington Healthcare Corp. (1991)	

Note: The Supreme Court of the United States determined in *Roberts v. Galen of Va.* (1999) that the Cleland court’s reading of appropriate medical screening was not at issue. EMTALA’s stabilization requirement “does not require an ‘appropriate’ stabilization, nor can it reasonably be read to require an improper motive.”²²

Circuit Split: Stabilization Requirement

Process to Find Secondary Source on Circuit Split:

Westlaw Precision: <https://1.next.westlaw.com> → Search Bar “EMTALA Interpretation by Circuit” → Filter: Secondary Sources → “Beyond the Emergency Room Doors: Rejecting Patient Admittance as Satisfaction of Hospital Obligations Under EMTALA”

Issue: Once a patient has been admitted to the general hospital, has the hospital fulfilled their EMTALA stabilization obligation?²³

Circuit	Sample Case	EMTALA Interpretation
4 th Circuit	Bryan v. Rectors and Visitors of University of Virginia (1996)	“the stabilization requirement was intended to regulate the hospital’s care of the patient only in the immediate aftermath of the act of admitting her for emergency treatment and while it considered whether it would undertake longer-term full treatment or instead transfer the patient to a

²² *Roberts v. Galen of Va.*, 525 U.S. 249, 252-53 (1999).

²³ Charlotte Fillenwarth, Note, *Beyond the Emergency Room Doors: Rejecting Patient Admittance As Satisfaction of Hospital Obligations Under EMTALA*, 11 IND. HEALTH L. REV. 791, 805 (2014).

		hospital that could and would undertake that treatment” ²⁴
6 th Circuit	Thornton v. Southwest Detroit Hospital (1990) Moses v. Providence Hospital and Medical Centers, Inc. (2009)	“emergency care does not always stop when a patient is wheeled from the emergency room into the main hospital” ²⁵ “once a patient is found to suffer from an emergency medical condition in the emergency room, she cannot be discharged until the condition is stabilized, regardless of whether the patient stays in the emergency room” ²⁶
9 th Circuit	Byrant v. Adventist Health System/West (2002)	“Thus, the term ‘stabilize’ was not intended to apply to those individuals who are admitted to a hospital for inpatient care.” “We hold that the stabilization requirement ends when a patient is admitted for inpatient care.” ²⁷ “We will not assume that hospitals use the admission process as a subterfuge to circumvent the stabilization requirement of EMTALA. If a patient demonstrates in a particular case that inpatient admission was a ruse to avoid EMTALA’s requirements, then liability under EMTALA may attach.” ²⁸

Note: The Supreme Court of the United States in Roberts v. Galen of Va. (1999) did not address this issue of when the stabilization requirement under EMTALA ends. Rather the Court determined that the showing of an improper motive is not required for EMTALA’s stabilization element.

Legislation

When legislation is enacted, it becomes primary law. Often legislative history is necessary to understand the Congressional intent behind legislation and to clarify ambiguities in the statutory language.²⁹ Legislative history includes the “documents that are produced by Congress as a bill is introduced, studied, and debated.”³⁰ It is a form of legal grey literature that is “neither binding nor necessarily universally persuasive, but it is increasingly making its way

²⁴ Bryan v. Rectors & Visitors of the Univ. of Va., 95 F.3d 349, 352 (4th Cir. 1996).
²⁵ Thornton v. Southwest Detroit Hosp., 895 F.2d 1131, 1135 (6th Cir. 1990).
²⁶ *Id.* at 1134.
²⁷ Bryant v. Adventist Health System/West, 289 F.3d 1162, 1167-68 (9th Cir. 2002).
²⁸ *Id.* at 1169.
²⁹ *Legislative History Research Guide*, GEORGETOWN, https://guides.ll.georgetown.edu/legislative_history (last visited Nov. 20, 2023).
³⁰ *Id.*

into other legal literature, like legal opinions.”³¹ When searching legislative history, prioritize finding Committee Reports which are considered the most persuasive legislative documents.

It is easier to do a legislative history search with the public law number:

Westlaw Precision: <https://1.next.westlaw.com> → Content Types → Statutes → USCA → Popular Name Table → Narrow by “E” → Select “Emergency Medical Treatment and Active Labor Act (ETMALA)” → Pub.L. 99-272

Google Search: “EMTALA Public Law Number” → Results: Often Cornell Legal Information Institute will include the Public Law number following the statutory text

[Consolidated Omnibus Budget Reconciliation Act of 1985 \(PL 99-272\)](#)

Status: Enacted

- **Westlaw Precision:** <https://1.next.westlaw.com> → Content Types → Statutes → USCA → Popular Name Table → Narrow by “E” → Select “Emergency Medical Treatment and Active Labor Act (ETMALA)” → Click “Legislative History Materials” → Narrow Content Types by Reports → [S. Rep. 99-146](#)
 - Includes concern over “appropriate medical screening examination” being overly broad and the definition of “emergency medical condition” being unclear
- **ProQuest Legislative Insight:** <https://li-proquest-com.proxy.library.umkc.edu/legislativeinsight> → Type Pub. L. 99-272 in Search Bar → Selected “Consolidated Omnibus Budget Reconciliation Act of 1985” → Click PL 99-272 [Legislative History PDF](#) OR scroll down to [Committee Reports](#)
- **Congress.gov:** www.congress.gov → Pub. L. 99-272 → Filter by 99th Congress → H.R.3128-Consolidated Omnibus Budget Reconciliation Act of 1985 → [See](#)

Tip: Congress.gov is a free resource if you do not have access to subscription services such as Westlaw and ProQuest.

Case Law

Case law is important for legal research for interpreting statutory law and regulations. Due to stare decisis, cases also show a trend in precedential interpretation. Using annotated statutes or secondary sources such as treatises is a great way to start researching cases.

Subscription Resources:

- Lexis+ and Westlaw Edge are great research tools to find on-point and relevant case law.
- Lexis+ has a Ravel feature which is the cluster of circles in the far-left corner. See below:
 - Each circle represents a case, divided by circuit, district, and state classifications. If you select a citation circle, the ravel feature shows connected cases. The selected case will be the featured case on the right-hand side.
 - The “Sort by” feature can be changed from Court to Relevance, both help the researcher find the most persuasive law on the topic.

³¹ PAUL D. CALLISTER, FIELD GUIDE TO LEGAL RESEARCH 74 (2019).

Correa v. Hospital San Francisco | United States Court of Appeals for the First Circuit | 1995-10-31 | 69 F.3d 1184
Sort by: Court
32

FILTERS

Correa v. Hospital San Francisco

United States Court of Appeals for the First Circuit | Oct 31, 1995 | 69 F.3d 1184 | U.S. Federal

OVERVIEW: Hospital's failure to screen an emergency room patient with chest pains who subsequently died was so egregious it amounted to an effective denial of a screening examination in violation of the Emergency Medical Treatment and Active Labor Act.

... violations of the Emergency Medical Treatment and Active Labor Act (**EMTALA**), 42 U.S.C.S. § 1395dd , and for medical malpractice. The ...

... the court affirmed, holding that defendant fell within the purview of **EMTALA** . The court found that defendant's failure to provide

Key Case Law Search:

EMTALA

Bloomberg: <https://bloomberglaw.com/start> → Select the Content drop-down and click Court Opinions → Search EMTALA → Ensure Sort by: Relevance is selected → Filter Options by Federal Circuit if desired

Lexis+: <https://plus.lexis.com/zhome> → Select Cases → All Federal & State → Search EMTALA → Select the ravel view → Click citation bubble to see connections to case (Sort by: Relevance or Court)

Westlaw Precision: <https://1.next.westlaw.com> → Select Relevant Jurisdiction → Type "EMTALA" into Search Bar → Sort by Relevance → List of Relevant cases

Google Scholar (Free): <https://scholar.google.com> → Type "EMTALA" into Search Bar → Sort by Relevance → Select the 3 Bars on the left-hand side and Choose Case Law → List of Relevant cases
https://scholar.google.com/scholar?hl=en&as_sdt=6%2C26&q=EMTALA+&btnG=&oq=EMTALA

EMTALA Screening Requirement

Bloomberg: <https://bloomberglaw.com/start> → Select the Content drop-down and click Court Opinions → Search "EMTALA Screening Requirement" → Ensure Sort by: Relevance is selected → Filter Options by Federal Circuit if desired

Lexis+: <https://plus.lexis.com/zhome> → Select Cases → All Federal & State → Search "EMTALA Screening Requirement" → Select the ravel view → Click citation bubble to see connections to case (Sort by: Relevance or Court)

Westlaw Precision: <https://1.next.westlaw.com> → Select Relevant Jurisdiction → Type "EMTALA Screening Requirement" into Search Bar → Sort by Relevance → List of Relevant cases

Google Scholar (Free): <https://scholar.google.com> → Type "EMTALA Screening Requirement" into Search Bar → Sort by Relevance → Select the 3 Bars on the left-hand side and Choose Case Law → List of Relevant cases
https://scholar.google.com/scholar?hl=en&as_sdt=6%2C26&q=EMTALA+Screening+Requirement&btnG=

EMTALA What does it mean to stabilize?

Bloomberg: <https://bloomberglaw.com/start> → Select the Content drop-down and click Court Opinions → Search "EMTALA What does it mean to stabilize" → Ensure Sort by: Relevance is selected → Filter Options by Federal Circuit if desired

Lexis+: <https://plus.lexis.com/zhome> → Select Cases → All Federal & State → Search "EMTALA What does it mean to stabilize" → Select the ravel view → Click citation bubble to see connections to case (Sort by: Relevance or Court)

Westlaw Precision: <https://1.next.westlaw.com> → Select Relevant Jurisdiction → Type "EMTALA What does it mean to stabilize" into Search Bar → Sort by Relevance → List of Relevant cases

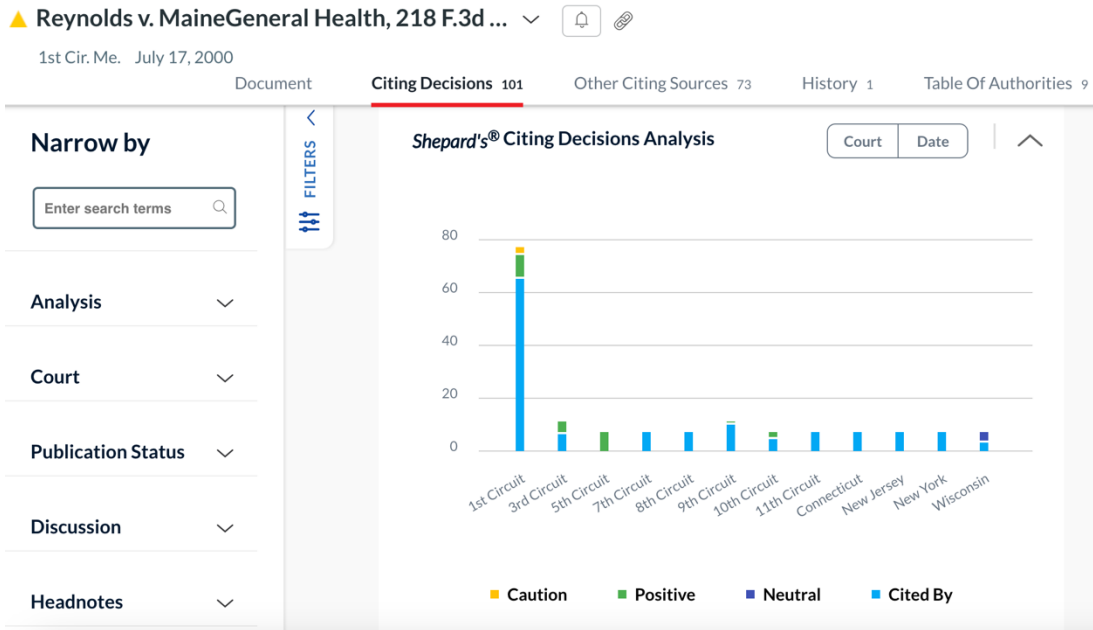
Google Scholar (Free): <https://scholar.google.com> → Type "EMTALA What does it mean to stabilize" into Search Bar → Sort by Relevance → Select the 3 Bars on the left-hand side and Choose Case Law → List of Relevant cases https://scholar.google.com/scholar?hl=en&as_sdt=6%2C26&q=EMTALA+what+does+it+mean+to+stabilize&oq=EMTALA+

Relevant Case Law Authority as of November 27, 2023

Applying the search tools above and the key words & phrases below, here is current, relevant case law on EMTALA. Ensure the case law you use in your research is still good law. Cases, especially for a topic with circuit splits such as EMTALA, will be criticized and distinguished. To ensure that the law you are citing to is good, validate the case through subscription service's citators.³²

- **Lexis+ offers a Shepard's treatment** that denotes positive and negative treatment for the points of law within a case. Always click on the link to Shepardize the document and pay attention to the indicators next to the case name that shorthand signal whether the law is still good law. See the example below. By Shepardizing the case, the researcher can see the treatment of the case law by other circuits, which is relevant for federal law.

³² *Legal Research: An Overview: Validating Your Research*, UCLA, <https://libguides.law.ucla.edu/c.php?g=686105&p=4848572#:~:text=This%20is%20an%20example%20of,least%20one%20point%20of%20law> (last accessed Nov. 23, 2023).



- **Westlaw uses KeyCite** to denote treatment of the case. Flags are used for a shorthand indication. Click the “Negative Treatment” tab to find out which points of law have negative treatment.
- **Bloomberg uses BCite** as their citator. BCite indicates treatment next to a cases’ name as well. When you click on a particular case, the right-hand column has a tool called “BCITE Analysis” that details history and negative treatment, if any.

Case Name	Circuit Court	Focus	Year
Bryant v. Adventist Health System/West	U.S. Court of Appeals for the Ninth Circuit	When stabilization requirement duty ends	2002
Reynolds v. Maine General Health	U.S. Court of Appeals for the First Circuit	Court does not need to reach any questions about the nature of stabilization if it is determined that there was no known emergency medical condition	2000
Bryan v. Rectors and Visitors of the Univ. of Va.	U.S. Court of Appeals for the Fourth Circuit	EMTALA is limited to anti-dumping	1996
Baber v. Hospital Corp. of America	U.S. Court of Appeals for the Fourth Circuit	EMTALA does not guarantee correct diagnosis of emergency medical	1992

		condition when screening	
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Key Words & Phrases:

The following key words and phrases may be used in the search bar or as a filter search within a search.

Key Words & Phrases	
What is EMTALA?	What are the elements of EMTALA?
Patient dumping	EMTALA Screening Requirement
EMTALA Stabilization Requirement	Emergency Medical Condition
What is the statute of limitations under EMTALA	Stabilized
Admit patient from ER	EMTALA and insurance
Appropriate transfer	Delaying medical screening exam
Faulty medical screening	Faulty diagnosis
EMTALA enforcement	Failure to Screen
Failure to Stabilize	Penalties hospitals violate EMTALA?
Obligation on physicians or hospitals	

Terms & Connectors

See [Lexis Search Commands & Connectors](#)

Connector	Symbol	Term & Connector
Exact Phrase	“ ”	Example: “Failure to screen”
And	&	2 or more words anywhere in the document Screening & failure
Or	__or__	To find docs that contain either or both of the words or phrases linked by “or” For synonymys, antonyms, alternatives, abbreviations Ex: patient dumping or patient-dumping
And not	And not Andnot But not butnot	Exclude documents containing the word or phrase Ex: EMTALA and not malpractice
Atleast	Atleast#()	Require a term or terms appear “at least” so many times in a document (Documents that contain in-depth discussion of the term used)

		Atleast5(faulty screening)
Within so many words of	w/3 – w/5 (in approx. the same phrase) w/25 (in approx. the same sentence) w/75 (in approx. the same paragraph) /n also works operates the same	Finds docs where the first word occurs with the number of words as the number from the last word Ex: faulty w/3 screen
Within paragraph	w/p or /p	Finds docs with search words that appear within approx. __ words of each other Ex: screening w/p delay
Within sentence	w/s or /s	Finds docs with search words that appear approx. 25 words of each other Ex: stabilization /s transfer
Within segment	w/seg	Finds doc in which your search terms appear in the same segment or within approx. 100 words of each other Ex: emergency condition w/seg screening
Variations of a Word	!	Finds variations on the term Ex: Stable! (stabilize, stabilization, stabilizing)

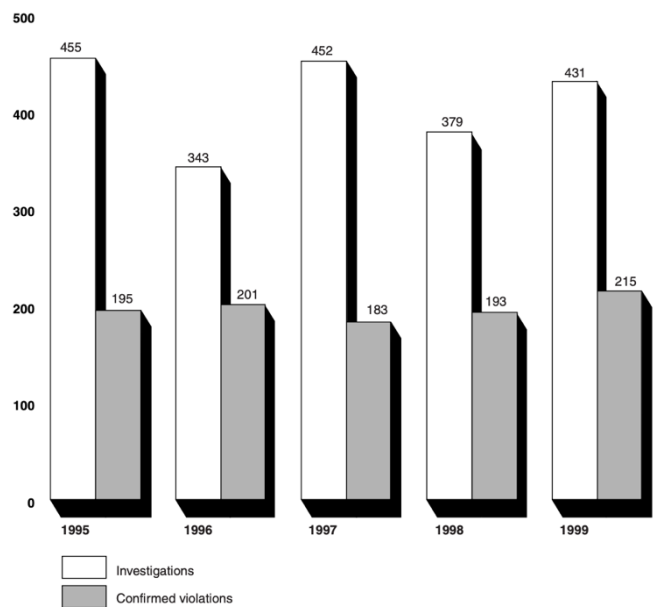
Agency

Agencies are responsible for ensuring compliance with statutory regulations. The U.S. Government Accountability Office (GAO), the U.S. Department of Health and Human Services, and the Centers for Medicare and Medicaid Service are important to the enforcement of EMTALA.

The U.S. Government Accountability Office (GAO)

- “GAO provides Congress, the heads of executive agencies, and the public with timely, fact-based, non-partisan information that can be used to improve government and save taxpayers billions of dollars. Our work is done at the request of congressional committees or subcommittees or is statutorily required by public laws or committee reports, per our Congressional Protocols.”³³
- **Navigating the GAO:** <https://www.gao.gov> → Click Menu → Search EMTALA → Select Emergency Care: EMTALA Implementation and Enforcement Issues → Chose Highlights or Full Report: [Report to Congressional Committees concerning EMTALA Implementation and Enforcement Issues.](#)

Figure 2: Total EMTALA Investigations and Confirmed Violations, Fiscal Years 1995 - 1999



Source: CMS central office EMTALA investigation logs.

The Department of Health & Human Services (HHS)

- “HHS is the Cabinet-level department of the Federal executive branch most involved with the Nation’s human concerns. In one way or another, it touches the lives of more Americans than any other Federal agency.”³⁴
- **Navigating the HHS:** <https://www.hhs.gov> → Search EMTALA → [See Results:](#)
 - [Emergency Medical Treatment and Labor Act Technical Advisory Group \(EMTALA TAG\)](#)
 - [EMTALA Guidance SCG](#)



³³ GAO, <https://www.gao.gov/about/what-gao-does> (last visited Nov. 21, 2023).

³⁴ Health and Human Services Department, FEDERAL REGISTER, <https://www.federalregister.gov/agencies/health-and-human-services-department#:~:text=The%20Department%20of%20Health%20and,with%20the%20Nation's%20human%20concerns.> (last accessed Nov. 22, 2023).

- [New Frequently Ask Questions on EMTALA](#)

Note: Both GAO and HHS either cite or direct the user to the CMS.

Centers for Medicare & Medicaid Service (CMS)

- “CMS is the federal agency that provides health coverage to more than 160 million through Medicare, Medicaid, the Children’s Health Insurance Program, and the Health Insurance Marketplace.”³⁵
- **Navigating CMS:** <https://www.cms.gov> → Search: EMTALA → [Results:](#)
 - [Emergency Medical Treatment & Labor Act \(EMTALA\)](#)
 - Under Downloads: [EMTALA Know Your Rights \(PDF\)](#)
 - Under Downloads: [State Operations Manual](#)

The screenshot shows the CMS.gov website. The main heading is "Emergency Medical Treatment & Labor Act (EMTALA)". Below the heading, there is a paragraph of text: "Pursuant to the preliminary injunction in Texas v. Becerra, No. 5:22-CV-195-H (N.D. Tex.), HHS may not enforce the following interpretations contained in the July 11, 2022, CMS guidance (and the corresponding letter sent the same day by HHS Secretary Becerra):". This is followed by two numbered points: "(1) HHS may not enforce the Guidance and Letter's interpretation that Texas abortion laws are preempted by EMTALA; and" and "(2) HHS may not enforce the Guidance and Letter's interpretation of EMTALA — both as to when an abortion is required and EMTALA's effect on state laws governing abortion — within the State of Texas or against the members of the American Association of Pro Life Obstetricians and Gynecologists (AAPLOG) and the Christian Medical and Dental Association (CMDA).". At the bottom of the page, it says "In 1986, Congress enacted the Emergency Medical Treatment & Labor Act (EMTALA) to".

Secondary Law

“Secondary sources are authorities that explain different points of law, but do not themselves carry the weight of establishing the law.”³⁶ These sources have the potential to show the reader the “prevailing view on how courts interpret primary sources.”³⁷ Secondary sources, including treatises, guides, CRS Reports, annotated law reports, and law review articles and comments, provide a more comprehensive overview and dive into the topic.

Treatises

“A treatise focuses on a single area of law and is written by experts in that area. Treatises range from broad, multi-volume sets to narrowly focused one-volume titles.”³⁸ Treatises are extremely helpful to the research process because of the relevant citations and legal explanations. It is recommended to use the table of contents and the index to find the relevant portions of the treatise.

- **Westlaw Precision:** <https://1.next.westlaw.com> → Secondary Sources → Texts & Treatises → EMTALA → Results:
 - [Establishing Hospital Liability under the Emergency Medical Treatment and Active Labor Act for “Patient Dumping” \(62 American Jurisprudence Trials 119\)](#)
 - Using the Table of Contents Article Outline: Go to II EMTALA Violations →

³⁵ CMS, <https://www.cms.gov/About-CMS> (last accessed Nov. 23, 2023).

³⁶ Jeremy Byellin, *The basics of secondary sources- what, why, how*, THOMAS REUTERS, <https://legal.thomsonreuters.com/en/insights/articles/the-basics-of-secondary-sources-what-why-how> (last accessed Nov. 22, 2023).

³⁷ *Id.*

³⁸ *Secondary Sources Research Guide*, GEORGETOWN LAW, <https://guides.ll.georgetown.edu/secondary/treatises> (last accessed Nov. 19, 2023).

- A. Failure to Provide Appropriate Medical Screening
 - B. Failure to Provide for Necessary Stabilizing Treatment for Emergency medical Conditions or Transfer
 - C. Establishing Liability
- [Financial Aid to Hospitals—Emergency Medical Treatment and Active Labor Act \(ETMALA\) \(40A American Jurisprudence 2d Section 12\)](#)
- **Bloomberg Law:** www.bloomberglaw.com/start → Search EMTALA → Filter Books & Treatises → Results
 - [American Law Institute, Restatement \(3rd\) of Torts: Miscellaneous Provisions, 1st Edition, Section 2: Patient-Care Relationship](#)
- **Lexis+:** <https://plus.lexis.com/zhome> → Secondary Sources → Treatises & Guides → Results:
 - [2 Treatise on Health Care Law § 11.03 Access to Health Care Services in General](#)

Guides & Manuals

Legal Guides and manuals serve as practice guides on a subject. This is both beneficial to attorneys and hospitals for EMTALA.

- **Westlaw Precision:** <https://1.next.westlaw.com> → Secondary Sources → Search EMTALA → Filter by Publication Type: Texts & Treatises → Results
 - [Health Care Financial Transactions Manual § 5:62. Application of EMTALA to hospital inpatients](#)
 - Discusses CMS guidelines for EMTALA hospital obligations for admitted patients
 - [Health Care financial Transactions Manual § 5:66 Penalties for EMTALA violations](#)
 - Discusses potential penalties for EMTALA violations
- **Westlaw Precision:** <https://1.next.westlaw.com> → Secondary Sources → Health Law Secondary Sources → Health Law Texts & Treatises → Health Law Practice Guide → Health Law Practice Guide 2d → Part II. Patient Care Delivery Issues → [Chapter 14. EMTALA Compliance](#)
 - [§14:1 Generally](#)
 - Discusses EMTALA requirements & compliance
 - [§14:39 Suggested EMTALA documents](#)
 - This guide provides a checklist for Hospital documents to ensure EMTALA compliance
- **Lexis+:** <https://plus.lexis.com/zhome> → Search EMTALA → Filter by Secondary Materials → Further filter by Treatises & Guides →
 - [1 Health Care Law: A Practice Guide, Second Edition § 21.01 Duty to Treat](#)

- **Bloomberg:** www.bloomberglaw.com/start → Click the “All Content” drop down arrow and chose Practical Guidance → Search EMTALA in search bar
 - [Emergency Medical Treatment and Active Labor Act \(EMTALA\): Overview, Health Operations & Compliance](#)
 - [Health Care Operations & Compliance, Comparison Table- Abortion Laws: A State-by-State Review](#)

See also Lexis+ tools which provide checklists for hospitals:

- [EMTALA Audit Tool](#) “This audit tool is designed to help hospitals understand whether they are in compliance with their programmatic EMTALA obligations. Continued training, auditing, and monitoring are the most effective ways to proactively prevent an EMTALA violation.”
- [Emergency Medical Treatment & Labor Act \(EMTALA\) Policy \(Hospitals and Health Systems\)](#) “The purpose of this policy is to ensure that the [hospital/health system] (Hospital) complies with the Emergency Medical Treatment & Labor Act (EMTALA).”

CRS Reports

“CRS reports provide Congress with both anticipatory and on-demand research and analysis to support their legislative, oversight, and representational duties.”³⁹ All reports “are authoritative, objective and nonpartisan.”⁴⁰

- **Congressional Research Service (Free Resource):** <https://crsreports.congress.gov/> → Search CRS Reports: EMTALA → See [Results](#)
 - See [Hospital-Based Emergency Departments: Background and Policy Considerations](#)
 - See [Overview of the Emergency Medical Treatment and Active Labor Act \(EMTALA\) and Emergency Abortion Services](#)
- **Bloomberg Law:** <https://www.bloomberglaw.com/> → Select the Laws & Regulations drop-down and choose Legislative Resources → Under Legislative Materials select CRS Reports → Search: EMTALA → [Results](#)
 - [EMTALA: Access to Emergency Medical Care](#) (CRS Report RS22738)
 - [Treatment of Noncitizens in H.R. 3200](#) (CRS Report R40773)
- **Hein Online:** <https://home.heinonline.org/> → Select the All Databases drop-down arrow and Expand U.S. Congressional Documents → Select CRS Reports → Search EMTALA → Results
 - EMTALA: Access to Emergency medical Care (RS22738)

³⁹ *About this Collection*, CONGRESSIONAL RESEARCH SERVICE, <https://crsreports.congress.gov/Home/About#:~:text=CRS%20reports%20provide%20Congress%20with,%2C%20oversight%2C%20and%20representational%20duties> (last accessed Nov. 25, 2023).

⁴⁰ *Id.*

American Law Reports (ALR)

American Law Reports “provide a very useful summary and analysis of the law in a specific area, and include citations to relevant primary law and other secondary sources.”⁴¹ “In addition to providing a summary of the legal issue, the Table of Cases, Laws, and Rules gives you a snapshot of the law across jurisdictions (federal, state, and foreign).”⁴²

- **Westlaw Precision:** <https://1.next.westlaw.com> → Secondary Sources → American Law Reports (ALR) → Search EMTALA → Results:
 - [Construction and Application of Emergency Medical Treatment and Active Labor Act](#) (42 U.S.C.A. § 1395dd) 104 A.L.R. Fed. 166
 - [Liability of Hospital for Refusal to Admit or Treat Patient](#) (35 A.L.R. 3d 841)
 - [Hospital Liability as to Diagnosis and Care of patients in Emergency Room](#) (58 A.L.R. th 613)

Law Review Articles & Comments

“Law review articles often focus on new or emerging areas of law and they can offer more critical commentary than a legal encyclopedia or ALR entry.”⁴³ Various law review articles discuss EMTALA interpretation circuit splits and emerging issues with EMTALA enforcement.

Westlaw Precision

- **Disentangling EMTALA from Medical Malpractice: Revising EMTALA’s Screening Standard to Differentiate Between Ordinary Negligence and Discriminatory Denials of Care**
 - Tulane Law Review, Volume 49 Issue 645 (December 2007)
 - **Process:** Westlaw Precision: <https://1.next.westlaw.com> → Secondary Sources → Law Reviews & Journals → Search: EMTALA
- **EMTALA: Protecting Patients First By Not Deferring to the Final Regulations**
 - Seton Hall Circuit Review, Volume 4, Issue 149 (Fall 2007)
 - **Process:** Westlaw Precision: <https://1.next.westlaw.com> → Secondary Sources → Law Reviews & Journals → Search: EMTALA
- **How Far is Too Far?: EMTALA Moves from the Emergency Room to Off-Campus Entities**
 - Wake Forest Law Review, Volume 36 Issue 823 (Fall 2001)
 - **Process:** Westlaw Precision: <https://1.next.westlaw.com> → Secondary Sources → Law Reviews & Journals → Search: EMTALA
- **The Labor Divide: EMTALA’s Preemptive Effect on State Abortion Restrictions**

⁴¹ *Secondary Sources Research Guide*, GEORGETOWN LAW, <https://guides.ll.georgetown.edu/secondary/ALR> (last accessed Nov. 22, 2023).

⁴² *Id.*

⁴³ Catherine Biondo, *Secondary Sources: ALRs, Encyclopedias, Law Reviews, Restatements, & Treatises*, HARVARD LAW, <https://guides.library.harvard.edu/c.php?g=309942&p=2070278#s-lg-page-section-2070278> (last accessed Nov. 22, 2023).

- Stanford Journal of Civil Rights & Civil Liberties, Volume 19 Issue 189 (August 2023)
- Process: Westlaw Precision: <https://1.next.westlaw.com> → Secondary Sources → Law Reviews & Journals → Search: EMTALA → Sort by Date

Lexis+

- **Article: The Anatomy of EMTALA: A Litigator's Guide**
 - St. Mary's Law Journal, Volume 27 Issue 463 (January 1996)
 - Process: Lexis+: <https://plus.lexis.com/zhome> → Secondary Materials: Law Reviews & Journals → Search EMTALA
- **NOTE: Does EMTALA Apply to Inpatients Located Anywhere in a Hospital?**
 - Rutgers Law Journal, Volume 32 Issue 549 (January 2001)
 - Process: Lexis+: <https://plus.lexis.com/zhome> → Secondary Materials: Law Reviews & Journals → Search EMTALA

HeinOnline

- **Article: EMTALA & Psychiatric Patients**
 - DePaul Journal of Health Care Law, Volume 21, Issue 1 (Summary 2019)
 - Process: <https://home.heinonline.org/> → Search EMTALA → Narrow Collection/Library to Law Journal Library → Results
- **Note: EMTALA: All Bark and No Bite**
 - University of Illinois Law Review, Volume 2005, Issue 4 (2005)
 - Process: <https://home.heinonline.org/> → Search EMTALA → Narrow Collection/Library to Law Journal Library → Results

Google Scholar (Free Resource)

- Process: www.scholar.google.com → Click the three lines in the top left-hand corner & select Articles → Search EMTALA → Narrow by Date → Sort by Relevance → [Results](#)

Social Science Research Network (SSRN)

- Process: <https://www.ssrn.com/index.cfm/en/> → Search EMTALA articles → Results
 - [EMTALA: Medicare's Unconstitutional Condition on Hospitals](#) (Hastings Constitutional Law Quarterly, Vol. 43, No. 1, 2015)
 - [Dumping the 'Anti-Dumping' Law: Why EMTALA Is \(Largely\) Unconstitutional and Why It Matters](#) (Minnesota Journal of Law, Science & technology, Volume 15, No. 1, 2014).

IV. Staying Informed

IN THE NEWS

It is important to stay up to date on current news as it interacts with the EMTALA federal statute. This has the potential to expand or change the courts' interpretation on EMTALA's components.

Bloomberg: <https://www.bloomberglaw.com/> → Content Types: Bloomberg Law News → Search EMTALA → Results:

<https://www.bloomberglaw.com/product/blaw/search/results/e06b0c28b4ef215f8e7fab8aa7908668>

CHECKLIST & PRACTICE TOOLS

CMS's: Emergency Medical Treatment and Labor Act (EMTALA) Requirements and Implications Related to Coronavirus Disease 2019 (COVID-19)

- <https://www.cms.gov/files/document/qso-20-15-emtala-requirements-and-coronavirus-0311-updated-003pdf.pdf-1>

Illinois Health & Association EMTALA Compliance Checklist 2020

- https://www.ihainsurancesolutions.com/IHAInsuranceSolutions/media/Insurance-Solutions/files/EducationPrograms/2002_ED_Handouts2.pdf

V. Conclusion

This guide is intended to help the relevant audience in understanding and performing their own research of EMTALA.