



## KANSAS HOSPITAL ASSOCIATION

# EMTALA & 250 Yard Rule

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CMS published the Final EMTALA Rule in the *Federal Register* on September 9, 2003, and it became effective November 10, 2003. One of the issues addressed was what is meant by "hospital property." Out of this issue comes the "250 yard rule."

### THE RULE:

On August 29, 2003, the Centers for Medicare and Medicaid Services ("CMS") issued final regulations regarding a hospital's obligations under the federal Emergency Medical Treatment and Labor Act ("EMTALA"). These regulations clarify when hospitals with emergency departments have a duty to medically screen and stabilize a person who "comes to the emergency department" when that person is not already a patient of the hospital. The phrase "comes to the emergency department" can refer to the following four distinct situations: (1) a person has come to a hospital's "dedicated emergency department," as that term has been specifically defined by the final regulations, or (2) a person is in a ground or air ambulance owned and operated by the hospital, or (3) a person is in a ground or air nonhospital-owned ambulance on hospital property, or (4) a person has presented on hospital property other than a dedicated emergency department. It is this last situation, in which a person has presented on hospital property, but the property is not a

dedicated emergency department, that is addressed by this installment of the EMTALA UPDATE.

EMTALA protections will apply: (1) to persons who come to hospital property seeking treatment for what may be an emergency medical condition, but who do not make it to the hospital's dedicated emergency department, (2) to persons who happen to be on hospital property for reasons other than to seek medical services for themselves, (for example, visitors to the hospital) and who start experiencing what may be an emergency medical condition while on hospital property, and (3) to persons who come to the hospital for an outpatient appointment, but start experiencing what may be an emergency medical condition BEFORE beginning to receive outpatient services.

**What is meant by hospital property?** Hospital property means the entire main hospital campus, as that term is defined in the provider-based status regulations found at 42 C.F.R. § 413.65 - i.e., the physical area immediately adjacent to the

hospital's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within **250 yards of the main buildings**, and any other areas determined on an individual case basis, by the CMS regional office, to be part of the hospital's campus. If located within 250 yards of the hospital's main buildings, the main hospital campus includes parking lots, sidewalks, and driveways. However, the final rule specifically excludes from the definition of hospital property "other areas or structures of the hospital's main building that are not part of the hospital, such as physician offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare, or restaurants, shops, or other nonmedical facilities."

In other words, an EMTALA obligation will not apply to structures or areas that are part of the hospital's main building or within 250 yards of the hospital's main building unless those structures or areas are operated as provider-based departments of the hospital, or constitute areas that otherwise serve the hospital, such as parking lots.

As CMS explains in the preamble to the final regulations, "the legislative provision under which EMTALA responsibilities apply ... is specific to hospitals, and does not extend to nonhospital entities (such as rural health clinics or physicians' offices)

even where those entities may be located adjacent to hospital facilities and owned or operated by hospitals, or both." [68 FR 53250] Therefore, an EMTALA obligation would not apply to fast-food restaurants, independent medical practices, or a skilled nursing facility, since these are not operated as provider-based departments of the hospital – i.e., they are not providing health care services that are billed under the hospital's provider number – even though the hospital might own them.

Significantly the final rule no longer applies the EMTALA obligation to off-campus departments of hospitals, unless those departments qualify as "dedicated emergency departments." Nevertheless, in the preamble to the final rule, CMS states that if an individual seeking emergency care comes to an off-campus hospital department, it would be appropriate for the department or other entity to call an emergency medical service (EMS) if it is incapable of treating the individual, and to furnish whatever assistance it can to the individual while awaiting the arrival of EMS personnel. [68 FR 53248]



Kansas Hospital Association  
215 S.E. Eighth Ave., P.O. Box 2308  
Topeka, KS 66601-2308  
Tel. (785) 233-7436 [www.kha-net.org](http://www.kha-net.org)