

CMS Rescinds Guidance on Emergency Abortion Care Under EMTALA

June 12, 2025

On June 3, 2025, CMS issued a [statement](#) rescinding prior guidance that had reaffirmed the obligations of hospitals and physicians to provide stabilizing treatment, including abortion care, to pregnant individuals with emergency medical conditions under the Emergency Medical Treatment and Active Labor Act (EMTALA).¹ The overturned guidance, [QSO-22-22-Hospitals](#), was originally released on July 11, 2022, after the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*. The guidance instructed: "[p]hysicians and hospitals have an obligation to follow... [EMTALA], even if doing so involves providing medical stabilizing treatment that is not allowed in the state in which the hospital is located." In the same statement, CMS announced it had also rescinded [QSO-21-22-Hospitals](#) (a similar QSO revised in August 2022) and a July 11, 2022, [letter](#) to health care providers from the former Secretary of Health and Human Services. The rescission was effective May 29, 2025.

In its statement, CMS noted the prior guidance did not align with the policy of the current Administration, but it will continue to enforce EMTALA, which protects all individuals who present to a hospital emergency department seeking examination or treatment, including for identified emergency medical conditions that place the health of a pregnant woman or her unborn child in serious jeopardy. CMS states it will work to rectify any perceived legal confusion.

Rescinding the prior guidance does not change federal law and does not relieve hospitals or physicians of their EMTALA obligations to screen and stabilize pregnant patients, nor does it alter the circumstances under which state laws prohibiting or limiting abortion may be preempted by federal laws like EMTALA. Of note, both memoranda had been issued to "remind hospitals of their existing obligation to comply with EMTALA" and did not "contain new policy." The rescission of the prior guidance signals a change in enforcement priorities and has led to some concerns about confusion and the potential for delay in care.

Physicians and hospitals must make case-specific determinations to balance both state law requirements and EMTALA obligations in rendering appropriate care to a pregnant patient in the ED setting. Even states with near-total abortion restrictions now have exceptions for abortions performed to save the life of the pregnant patient. Providers should review their state statutes with attention to relevant definitions, exceptions to any abortion limitations or prohibitions, and best practices for clinical documentation regarding the presence of an emergency medical condition. Ideally, hospitals and

¹ For more information on the Biden Administration's EMTALA guidance, please see our July 13, 2022, client advisory: [EMTALA Questions Loom Following the Dobbs Decision Overturning Roe](#).

physicians can comply with both EMTALA and state law under this framework. In the meantime, CMS may issue clarifying guidance.

For questions regarding the interplay between EMTALA and state abortion laws, please contact any of the following Hancock, Daniel & Johnson attorneys: [Mary Malone](#), [Ashley Calkins](#), [Annie Howard](#), or [Sandi Douglas](#).

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