

## COVID-19 FAQ

### **1. Can hospital emergency departments go on diversion or refuse to accept patients?**

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Answer: Yes, a hospital may go on diversion in accordance with local and state protocols. EMTALA ordinarily requires the hospital to perform a screening exam of any patient that comes to the hospital and to stabilize those patients before transport if they are unable to accept the patient. However, some of the EMTALA obligations have been waived by the Secretary of Health and Human Services during this public health emergency. Here's a quick summary:

On March 13, 2020, following President Trump's declaration of a national emergency due to the COVID-19 pandemic, [the Secretary of Health and Human Services \(HHS\) issued](#), among others, the following Emergency Medical Treatment and Labor Act (EMTALA) waiver under his 1135 waiver authority:

Waiver of sanctions under EMTALA for the direction or relocation of an individual to another location to receive medical screening pursuant to an appropriate state emergency preparedness plan or for the transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared Federal public health emergency for the COVID-19 pandemic.

This waiver gives hospitals flexibility regarding the management of emergency department resources regarding COVID-19 screening and treatment. With this waiver, a hospital is permitted to redirect patients seeking COVID-19 screening to an alternative site, even off-campus, to conduct a medical screening examination (MSE) there, without conducting an MSE at the hospital.

However, that the waiver allows for redirection or transfer to deal only with the COVID-19 pandemic. Hospitals should not otherwise take actions inconsistent with EMTALA.

Also, the waiver expressly states that it does not apply to any action taken that discriminates among individuals based on their source of payment or ability to pay.