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### CMS Cites EMTALA Obligations Around Pregnancy; Waivers May Be a Risk in States Without PHE

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In a September 17 memo, CMS reminded hospitals of their obligations to “patients who are pregnant or are experiencing pregnancy loss” under the Emergency Medical Treatment and Labor Act (EMTALA), a move seen as a message to providers in Texas, which enacted a near total ban on abortion, and other states, such as Mississippi, that have sharply restricted access to abortion.<sup>[1]</sup>

The memo is the latest development with EMTALA compliance, which may have suffered during COVID-19 because of overwhelmed emergency rooms and staffing shortages, attorneys said. There’s also a question of whether hospitals can rely on CMS’s limited EMTALA waiver and some other waivers in states that have ended their public health emergency (PHE).

Under EMTALA, hospitals must provide all patients who come to the emergency room a medical screening exam (MSE) regardless of their ability to pay and stabilize patients with an emergency medical condition (EMC) within the hospital’s capacity and capability. Patients may be transferred if hospitals lack the capabilities to stabilize the EMCs, and receiving hospitals must accept patients if they have the capabilities and capacity to treat them.

According to the CMS memo, “emergency medical conditions involving pregnant patients may include, but are not limited to: ectopic pregnancy, complications of pregnancy loss, or emergent hypertensive disorders, such as preeclampsia with severe features. The course of treatment necessary to resolve such emergency medical conditions is also under the purview of the physician or other qualified medical personnel. Stabilizing treatment could include medical and/or surgical interventions (e.g., dilation and curettage (D&C), removal of one or both fallopian tubes, anti-hypertensive therapy, etc.).” In terms of transfers, CMS said, “if the hospital does not have staff or resources to provide obstetrical services, the benefits of a transfer may outweigh the risks. A hospital cannot cite State law or practice as the basis for transfer.”

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