

# PUBLICATION

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## CMS Rescinds Prior Administration's EMTALA Guidance on Emergency Abortions

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The Centers for Medicare & Medicaid Services (CMS) has rescinded its 2022 guidance and accompanying letter that reinforced hospitals' obligations under the Emergency Medical Treatment and Labor Act (EMTALA) to provide emergency abortion care to women. The move removes federal protections for health care providers who offer emergency abortion care in states that restrict or ban the procedure.

### EMTALA's Definition of Emergency Care

EMTALA mandates that Medicare-enrolled hospitals with "dedicated emergency departments" must provide a medical screening examination to anyone seeking emergency care and offer stabilizing treatment for emergency medical conditions (EMCs). 42 U.S.C. § 1395dd(a); 42 C.F.R. § 489.24(a)(1). An EMC is defined as a condition with acute symptoms so severe that, without immediate medical attention, the patient's health – or that of an unborn child – would be in serious jeopardy or could result in serious impairment or dysfunction of bodily functions or organs. 42 C.F.R. § 489.24(b).

### State Law and Abortion Exceptions

The Biden Administration issued the 2022 [guidance](#) following the overturn of *Roe v. Wade*. The rescinded guidance had previously clarified that, under EMTALA, hospitals must provide abortions if necessary to stabilize an EMC, regardless of conflicting state laws. The guidance also clarified that EMCs involving pregnant patients could include conditions like ectopic pregnancy, complications of pregnancy loss, or emergent hypertensive disorders, such as preeclampsia with severe features.

However, state abortion bans often set a higher threshold, permitting abortion only when a patient's life is at imminent risk, not merely when health is in jeopardy. This creates a legal gray area for clinicians, as the federal EMTALA standard for emergency care may be broader than state exceptions to abortion bans.

### Importance of Documentation

Given this legal uncertainty, meticulous documentation is essential. Hospitals and providers must clearly record their clinical assessment, the patient's condition, the rationale for determining an EMC, and the medical necessity of any intervention, including abortion if applicable. Comprehensive documentation not only demonstrates compliance with EMTALA and applicable state laws but also provides legal protection for clinicians making urgent, complex decisions in high-risk situations.

As the legal landscape evolves, hospitals and providers must stay informed of both federal obligations and state restrictions, ensuring policies and training reflect current laws and best practices for emergency care and documentation.

Baker Donelson will continue to track developments at the federal and state levels regarding EMTALA and emergency abortion care. In the meantime, should you require assistance navigating this challenging regulatory environment, please contact [Robert Anthony Wells](#), [Mary Grace Griffin](#), [Katherine Denney](#), or any member of Baker Donelson's [Health Law](#) team.

