

| <b>EMTALA</b>                             |  | <b>Medical Malpractice</b>      |   |
|---|--|---------------------------------|---|
| Federal law                               | Enacted by Congress in 1986 as part of the Medicare statute. Generally uniform across the U.S. EMTALA makes no reference to state law (except perhaps in what treatment constitutes stabilization).  | State law                       | Just specialized tort law; mostly common law; varies across 54 jurisdictions  |
| No treatment relationship required        | Obligations exist even without existence of treatment relationship. Indeed, when it applies, EMTALA effectively forces the formation/creation of a treatment relationship.   | Treatment relationship required | Obligations do not exist until the formation and existence of treatment relationship. <i>Hurley</i>   |
| Hospitals only                            | A private lawsuit for damages can be brought only against a hospital. <i>Burditt</i>   | All healthcare providers        | A private lawsuit for damages can be brought against any healthcare provider in a treatment relationship with the patient.  |
| Some providers                            | Even when enforced by DHHS, EMTALA only applies to certain types of providers: hospitals, ED physicians, on-call physicians.   | All healthcare providers        | A private lawsuit for damages can be brought against any healthcare provider, in any setting, in a treatment relationship with the patient.   |
| Screen for what aware                     | There is a duty to screen only based on conditions that one actually aware the patient is presenting with. <i>Kaufmann</i>   | No duty to screen               | If there is not already a treatment relationship, there is no duty to screen.   |
| Screen uniformly                          | There is a duty to screen each patient only in the same way that other patients with the same condition would be screened at that facility. There is no EMTALA liability for a negligent or erroneous screening, only for a dissimilar screening. <i>Kaufmann; Portz</i> | Screen per SOC                  | Once performed, screening must done according to the standard of care. It must be done as the reasonably prudent physician would have done it under the same circumstances.   |
| Stabilize only EMC actually aware of      | There is a duty to stabilize only emergency medical conditions that one is actually aware of. As long as the patient got a uniform screening, there is no EMTALA liability for failing to identify an EMC. <i>Torretti</i>   | Stabilize per SOC               | One can be liable for failing to recognize that the patient had an emergency medical condition.   |
| No application to outpatients, inpatients | EMTALA does not protect inpatients and outpatients. They can be transferred even with an un-stabilized EMC. <i>Torretti; Albert Einstein; 2003 regulations</i>   | Applies to all patients         | One can be liable for the quality of treatment to all patients with whom one has a treatment relationship, including inpatients and outpatients. Discharging these patients without their consent before stabilization could constitute tortious abandonment. |

Note: This is an illustration of some key differences between EMTALA and medical malpractice. It is not exhaustive.