

<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.