

Role of the Registered Nurse in Performing Medical Screening Examinations under the Emergency Medical Treatment and Active Labor Act (EMTALA)

The OSBN Decision Making Guideline was used to formulate this Interpretive Statement. Each section of the guideline is defined, and the applicability to EMTALA is explained. The *OSBN Scope of Practice Decision Making Guideline for All Licensed Nurses* will be a helpful tool when using this interpretive statement.

The Emergency Medical Treatment and Active Labor Act was passed as part of the Federal Consolidated Omnibus Reconciliation Act of 1986 and is sometimes referred to as *COBRA*. EMTALA is a federal law and not a state law. Visit <http://www.emtala.com/faq.htm> to learn more about EMTALA.

EMTALA is not under jurisdiction of the OSBN except as defined in Oregon Administrative Rule (OAR) 851-045-0070 (8) (a), which states that it is Conduct Derogatory to Nursing to violate or circumvent any law, rule or regulation intended to guide the conduct of nurses or other health care providers.

The intent of EMTALA is to prevent hospitals from refusing to treat patients, rejecting patients, or transferring them to “charity hospitals” or “county hospitals” because patients are unable to pay or are covered under the Medicare or Medicaid programs. The overall intent is that a patient who presents with an emergency medical condition and who is unable to pay may not be treated differently than patients who are covered by health insurance. The requirement is that (1) any patient who comes to the emergency department and requests an examination or treatment for a medical condition must be provided with an appropriate medical screening examination to determine if an emergency medical condition exists and (2), a pregnant woman who presents in active labor must be admitted and treated until the delivery of the placenta. Once a person is either found not to have an emergency medical condition or has been stabilized, obligation under EMTALA ends.

EMTALA is applicable only to “participating hospitals”; i.e. hospitals which have entered into “provider agreements” under which they will accept payment from Centers for Medicare and Medicaid Services (CMS). This is applicable to programs housed within Hospitals and some off-campus clinics affiliated with

Oregon State Board of Nursing Interpretive Statement

a hospital. This essentially means all hospitals, with few exceptions. The requirement is for all patients, not just those covered by CMS programs.

It is beyond the scope of this statement to identify all the requirements of EMTALA. Licensees desiring more information may access the above website or other available websites.

1. Identify, describe or clarify the role, intervention or activity under consideration.

Performance of a medical screening examination (MSE) by RNs as per the requirements of EMTALA.

2. Is the role, intervention or activity prohibited by the Nurse Practice Act and Rules/Regulations or any other applicable laws, rules/regulations or accreditation standards?

The Oregon NPA does not specifically prohibit nurses from performing an MSE. The COBRA Act of 1986 states that an MSE may only be performed by a *Qualified Medical Professional (QMP)*. The law further states that hospital by-laws must identify who is considered a QMP and that appropriate policies must be written to identify the requirements of a QMP. Triage is not considered an MSE.

Therefore, a Registered Nurse may not perform an MSE unless the hospital by-laws have identified the RN as a QMP and policies describe the requirements of the QMP. Advanced Practice Registered Nurses (APRNs) fall under the same requirement and hospital by-laws must identify the APRN as a QMP along with other Licensed Independent Provider.

The specific components of an MSE are not identified by law. EMTALA states that in order to perform an effective MSE, the QMP should utilize all available resources of the facility to establish if an emergency medical condition exists. Since this would require a comprehensive assessment, the performance of an MSE is not within the scope of a Licensed Practical Nurse who, per OAR 851-045-0050, (3) (a), performs *focused assessments*.

3. Is performing the role, intervention or activity consistent with professional nursing standards, evidence-based nursing and health care literature?

A review of literature will result in identifications of several hospitals, particularly in Labor and Delivery units, that have identified the RN as a QMP.

Oregon State Board of Nursing Interpretive Statement

4. Are there practice setting policies and procedures in place to support performing the role, intervention or activity?

If the hospital by-laws identify the RN as a QMP and appropriate policies identify the requirements of a QMP, then the law has been satisfied.

5. Has the nurse completed the necessary education to safely perform the role, intervention or activity?

Since EMTALA is applicable to hospitals, it would be up to the hospital policies to describe the educational requirements of a QMP and identify the competency validation process.

OAR 851-045-0070, (3) (f) states that it is conduct derogatory to the standards of nursing to assume duties and responsibilities within the practice of nursing without documented preparation for the duties and responsibilities and when competency has not been established and maintained.

6. Is there documented evidence of the nurse's current competence (knowledge, skills, abilities and judgement) to safely perform the role, intervention or activity?

This would be determined by the hospital requirements and policies regarding the knowledge and competency validation of the role of the RN as a QMP.

7. Would a reasonable and prudent nurse perform the role, intervention or activity in this setting?

If the hospital identifies the RN as a QMP, appropriate policies have been established, education and competency validation has been demonstrated, this activity would be performed by a reasonable and prudent nurse.

8. Is the nurse prepared to accept accountability for the role, intervention or activity for the related outcome?

Education, training, and competency validation can give the RN the knowledge to manage consequences. Appropriate, effective, and timely application of consequence management would be a self-regulatory issue. The individual nurse would need to accept the assignment of a QMP and in doing so, understand the requirements of the assignment. If all criteria have been met, then the activity is within the scope of practice for an RN. The RN may still decline to perform the procedure but cannot use scope of practice violation as a reason to decline.

Oregon State Board of Nursing Interpretive Statement

9. The nurse may perform this role, intervention or activity to acceptable and prevailing standards of safe nursing care.

The requirements of being identified as a QMP are federal law, therefore, no provider or individual unit within a facility may authorize an RN to perform a MSE unless the hospital by-laws have identified RNs as a QMP.

References:

Oregon's Nurse Practice Act.

US Department of Health and Human Services, Centers for Medicare and Medicaid, 42 CFR Parts 413, 482, and 489 CMS.gov.

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The Oregon State Board of Nursing (OSBN) is authorized by Oregon Revised Statutes Chapter 678 to exercise general supervision over the practice of nursing in Oregon to include regulation of nursing licensure, education, and practice in order to assure that the citizens of Oregon receive safe and effective care. The OSBN further interprets statute and rule and issues opinions in the form of policies and interpretive statements, which are advisory in nature and used as guidelines for safe nursing practice.