

Model Hospital Policy on Compliance with EMTALA

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Compliance with Emergency Medical Treatment and Active Labor Act (EMTALA)

I. Purpose

To describe and comply with EMTALA and to define policies and procedures for compliance with the EMTALA obligations.

II. Policy

- A. **Compliance.** It is the policy of the Hospital to comply with the EMTALA obligations. These policies are mandated by Section 1867 of the Social Security Act, as amended, and regulations adopted by the Centers for Medicare & Medicaid Services (CMS), and applicable state laws governing the provision of emergency services and care.
- B. **Non-Discrimination.** The Hospital will provide emergency services and care without regard to an individual's race, ethnicity, national origin, citizenship, age, sex, sexual orientation, preexisting medical condition, physical or mental disability, insurance status, economic status, ability to pay for medical services, or any other characteristic listed in the Unruh Civil Rights Act, except to the extent that a circumstance such as age, sex, preexisting medical condition, or physical or mental disability is medically significant to the provision of appropriate medical care to the patient.
- C. **Enforcement.** CMS and the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services are responsible for the enforcement of EMTALA. Violations of EMTALA may be reported to other federal and state agencies and to the Joint Commission.
- D. **Sanctions.** Failure to comply with EMTALA may result in termination by CMS of the Hospital's participation in the Medicare and Medicaid programs, as well as civil monetary penalties imposed by the OIG for both the Hospital and physicians of up to \$50,000 and possible exclusion from Medicare/Medicaid. Failure to comply with state laws on emergency

services is subject to a licensing enforcement action. A violation of EMTALA is also subject to civil lawsuits for damages.

III. Definitions

- A. **Appropriate Transfer** means a transfer of an individual with an emergency medical condition that is implemented in accordance with EMTALA standards (see VIII below).
- B. **Campus** means the buildings, structures and public areas of the Hospital that are located on Hospital property (see III.L below). **Off-Campus** means the buildings, structure and public areas of the Hospital that are located off-site of the Hospital property.
- C. **Capability** means the physical space, equipment, staff, supplies and services (e.g., surgery, intensive care, pediatrics, obstetrics and psychiatry), including ancillary services available at the Hospital.
- D. **Capacity** means the ability of the Hospital to accommodate an individual requesting or needing examination or the treatment of a transferred individual. Capacity encompasses the number and availability of qualified staff, beds, equipment and the Hospital's past practices of accommodating additional individuals in excess of its occupancy limits.
- E. **Central Log** means a log maintained by the Hospital on each individual who comes to its dedicated emergency department(s) or any location on the Hospital property seeking emergency assistance and the disposition of each individual.
- F. **Comes to the Emergency Department** means an individual who—
 - (1) Presents at the Hospital's dedicated emergency department and requests or has a request made on his/her behalf for examination or treatment for a medical condition, or a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition;
 - (2) Presents on Hospital property other than a dedicated emergency department, and requests or has a request made on his/her behalf for examination or treatment for what may be an emergency medical condition, or a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs emergency examination or treatment;
 - (3) Is in a ground or air ambulance owned and operated by the Hospital for the purposes of examination or treatment for a medical condition

at the Hospital's dedicated emergency department, unless the ambulance is operated (i) under communitywide EMS protocols that direct the ambulance to transport the individual to another facility (e.g., the closest available facility); or (ii) at the direction of a physician is not employed or affiliated with the Hospital; or

- (4) Is in a non-Hospital owned ground or air ambulance that is on Hospital property for presentation for examination or treatment for a medical condition at the Hospital's dedicated emergency department.

G. **Dedicated Emergency Department** means any department of the Hospital, (whether located on Hospital property or off-campus) that meets at least one of the following requirements:

- (1) It is licensed under applicable state law as an emergency room or emergency department; or
- (2) It is held out to the public (by name, posted signs, advertising or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or
- (3) During the immediately preceding calendar year, it provided (based on a representative sample) at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

H. **Department of the Hospital** means a Hospital facility or department that provides services under the name, ownership, provider number and financial and administrative control of the Hospital. For purposes of EMTALA, a department of the Hospital does not include a skilled nursing facility, home health agency, rural health clinic, free-standing ambulatory surgery center, private physician office or any other provider or entity that participates in the Medicare program under a separate provider number.

I. **EMTALA** means the Emergency Medical Treatment and Active Labor Act codified in §§1866 and 1867 of the Social Security Act (42 U.S.C. §1395dd), and the regulations and interpretive guidelines adopted by CMS thereunder. EMTALA is also referred to as the "patient anti-dumping" law.

J. **Emergency Medical Condition** means:

- (1) A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances and/or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in:

- i. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;
 - ii. Serious impairment to bodily functions; or
 - iii. Serious dysfunction of any bodily organ or part; or
- (2) With respect to a pregnant woman who is having contractions:
 - i. When there is inadequate time to effect a safe transfer to another hospital before delivery; or
 - ii. The transfer may pose a threat to the health or safety of the woman or the unborn child.
- K. **Hospital** means a Hospital that has entered into a Medicare provider agreement, including a critical access or rural primary care hospital.
- L. **Hospital Property** means the entire main Hospital campus, including areas and structures that are located within 250 yards of the main buildings, and any other areas determined on an individual case basis by the CMS regional office, to be part of the main Hospital’s campus. Hospital property includes the parking lots, sidewalks, and driveways on the main Hospital campus.
- M. **Inpatient** means an individual who is admitted to the Hospital for bed occupancy for purposes of receiving inpatient services with the expectation that he/she will remain at least overnight and occupy a bed, even though the individual may be later discharged or transferred to another facility and does not actually use a Hospital bed overnight.
- N. **Labor** means the process of childbirth beginning with the latent or early phase of labor and continuing through the delivery of the placenta. A woman is in true labor unless a physician, certified nurse-midwife or another qualified person acting within the scope of his/her practice (and the Medical Staff Bylaws), certifies that, after a reasonable period of observation, the woman is in false labor.
- O. **Medical Screening Examination** means the process required to reach within reasonable clinical confidence, the point at which it can be determined whether or not an emergency medical condition exists or a woman is in labor. The medical screening examination is an ongoing process, including monitoring of the individual, until the individual is either stabilized or transferred.
- P. **On-Call List** means the list of physicians who are “on-call” after the initial medical screening examination to provide further evaluation and/or

treatment necessary to stabilize an individual with an emergency medical condition.

- Q. **Outpatient** means an individual who has begun to receive outpatient services as part of an encounter, other than an encounter that triggers the EMTALA obligations. An “encounter” is a direct personal contact between an outpatient and a physician or qualified medical person who is authorized by state law to order or furnish Hospital services for the diagnosis or treatment of the outpatient.
- R. **Physician** means: (i) a doctor of medicine or osteopathy; (ii) a doctor of dental surgery or dental medicine; (iii) a doctor of podiatric medicine; or (iv) a doctor of optometry, each acting within the scope of his/her respective licensure and clinical privileges.
- S. **Physician Certification** means the written certification by the treating physician ordering a transfer and setting forth, based on the information available at the time of transfer, that the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of a woman in labor, to the unborn child, from effecting the transfer.
- T. **Qualified Medical Person** means an individual other than a licensed physician who (i) is licensed or certified by the state in which the Hospital is located; (ii) practices in a category of health professionals that has been designated by the Hospital and the medical staff bylaws, rules and regulations, to perform medical screening examinations within the scope of his/her designation; (iii) has demonstrated current competence in the performance of medical screening examinations within his/her health profession; and (iv) as applicable, performs the medical screening examination in accordance with protocols, standardized procedures or other policies as may be required by law or Hospital policy. A qualified medical person may include registered nurses, nurse practitioners, nurse-midwives, psychiatric social workers, psychologists and physician assistants.
- U. **Signage** means the signs posted by the Hospital in its dedicated emergency department(s) and in a place or places likely to be noticed by all individuals entering the dedicated emergency department(s) (including waiting room, admitting area, entrance and treatment areas), that inform individuals of their rights under EMTALA.
- V. **Stabilized** means, with respect to an emergency medical condition, that no material deterioration of the condition is likely within reasonable medical probability, to result from or occur during the transfer of the individual from the Hospital or in the case of a woman in labor, that the woman delivered the child and the placenta. An individual will be deemed stabilized if the

treating physician has determined, within reasonable clinical confidence, that the emergency medical condition has been resolved.

- W. **To Stabilize** means, with respect to an emergency medical condition, to either provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from the Hospital or, in the case of a woman in labor, that the woman has delivered the child and the placenta.
- X. **Transfer** means the movement (including the discharge) of an individual outside the Hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the Hospital, but does not include such a movement of an individual who has been declared dead or who leaves the Hospital against medical advice or without being seen.
- Y. **Triage** means a process to determine the order in which individuals will be provided a medical screening examination by a physician or qualified medical person. Triage is not the equivalent of a medical screening examination and does not determine the presence or absence of an emergency medical condition.

IV. Scope of EMTALA

- A. **Application to the Hospital.** EMTALA is applicable to any individual who comes to the emergency department (see definition in III.F above).
- B. **Where EMTALA Does Not Apply.** EMTALA does not apply to the following:
 - (1) An outpatient during the course of his/her encounter (even if the outpatient develops an emergency medical condition while receiving outpatient services and is taken to the dedicated emergency department for further examination and treatment);
 - (2) An inpatient (including inpatients who are "boarded" in the dedicated emergency department waiting for an available bed);
 - (3) An individual who presents to any off-campus department of the Hospital that is not a dedicated emergency department;
 - (4) An individual who presents to a rural health clinic, skilled nursing facility or home health agency owned or operated by the Hospital, whether located on-campus or off-campus, or a private physician's

office or other ambulatory care clinic that participates separately from the Hospital in the Medicare program;

- (5) Restaurants, private residences, shops or other nonmedical facilities that are not part of the Hospital.
- C. **Application to Physicians.** EMTALA is applicable to any physician who is responsible for the examination, treatment or transfer of an individual to whom EMTALA applies, including an on-call physician and other members of the medical staff who provide for the care of such an individual.
- D. **Dedicated Emergency Departments.** The Hospital has determined that the following departments of the Hospital are dedicated emergency departments:
- (1) Emergency Department
 - (2) Labor & Delivery
 - (3) Psychiatric Service
 - (4) Urgent Care Center
 - (5) [modify above list and/or insert other applicable departments]

V. General Policies

- A. **Signage.** The Hospital will post signage conspicuously in lobbies, waiting rooms, admitting areas and treatment rooms where examination and treatment occurs in the form required by CMS that specifies the rights of individuals to examination and treatment for emergency medical conditions and whether the Hospital participates in the Medicaid program. Signage will be posted in each dedicated emergency department.
- B. **Central Log.** Each dedicated emergency department of the Hospital will maintain a central log recording the names of individuals who come to the emergency department. The central log will record the name of each person who presents for emergency services and whether the person refused treatment, was refused treatment by the Hospital or whether the individual was transferred, admitted and treated, stabilized and transferred or discharged. Each dedicated emergency department will establish its own central log policy and procedure.
- C. **On-Call Coverage.** The Hospital will maintain a list of physicians who are on-call to come to the Hospital to consult or provide treatment necessary to stabilize an individual with an emergency medical condition. The on-call list will be maintained in a manner that best meets the needs of the individuals who are receiving emergency services in accordance with the resources available to the Hospital, including the availability of on-call

physicians. On-call physician responsibilities to respond, examine and treat emergency patients will be defined in the medical staff bylaws, rules and regulations. Each dedicated emergency department will be prospectively aware of the physicians who are on-call to the department. The notification of an on-call physician will be documented in the medical record and any failure or refusal of an on-call physician to respond to call will be reported to the medical staff.

- D. **Maintenance of Records.** Medical and other records (such as transfer logs, on-call lists and changes to the on-call list and central logs) will be maintained in accordance with Hospital record retention policies, but not less than five years.
- E. **Disputes.** In the event of any concern over emergency services to an individual, or a dispute with another facility regarding a transfer or a concern about the Hospital's compliance with EMTALA, Hospital staff or physicians will refer the dispute to the department or person designated by the Hospital.
- F. **Reporting EMTALA Violations.** The Hospital department will report to CMS or the state survey agency if it has a reason to believe that it has received an individual who has been transferred in an unstabilized emergency medical condition from another facility. All Hospital personnel who believe that an EMTALA violation has occurred will report the violation to the department or person designated by the Hospital.
- G. **Retaliation.** The Hospital will not retaliate, penalize or take adverse action against any physician or qualified medical person for refusing to transfer an individual with an emergency medical condition that has not been stabilized, or against any Hospital employee for reporting a violation of EMTALA or state laws to a governmental enforcement agency.

VI. Medical Screening Examination

- A. **Policy Statement.** A medical screening examination will be offered to any individual who comes to the emergency department. The medical screening examination must be provided within the capability of the dedicated emergency department, including ancillary services routinely available to the dedicated emergency department (including the availability of on-call physicians). The medical screening examination must be the same appropriate examination that the Hospital would perform on any individual with similar signs and symptoms, regardless of the individual's ability to pay for medical care.
- B. **Scope.** The scope of the medical screening examination must be tailored to the presenting complaint and the medical history of the individual. The

process may range from a simple examination (such as a brief history and physical) to a complex examination that may include laboratory tests, MRI or diagnostic imaging, lumbar punctures, other diagnostic tests and procedures and the use of on-call physicians.

- C. **Comparison with Triage.** Triage is not equivalent to a medical screening examination. Triage merely determines the “order” in which individuals will be seen, not the presence or absence of an emergency medical condition.
- D. **Continuous Monitoring.** The medical screening examination is a continuous process reflecting ongoing monitoring in accordance with an individual’s needs. Monitoring will continue until the individual is stabilized or appropriately transferred. Reevaluation of the individual must occur prior to discharge or transfer.
- E. **Personnel Qualified to Perform Medical Screening Examinations.** The categories of qualified medical persons qualified to perform medical screening examinations in the dedicated emergency department(s) and other departments of the Hospital will be defined in the medical staff rules and regulations.
- F. **Department Policies.** Each Hospital will adopt policies and procedures that describe the conduct of the medical screening examination in its dedicated emergency department(s) and other departments of the Hospital. The policies will also describe the documentation of patient records, on-going in-service training of Hospital personnel and quality management review of medical screening examinations.

VII. Patient Registration

- A. **Policy.** The Hospital will provide a medical screening examination, and, as clinically indicated, initiate necessary stabilizing treatment, without first inquiring about an individual’s method of payment or insurance status.
- B. **Patient Registration.** The Hospital may follow reasonable registration processes for individuals for whom examination or treatment is required under EMTALA.
- C. **Prior Authorization.** The Hospital may not seek, or direct an individual to seek, authorization from the individual’s insurance company or health plan for the medical screening examination or stabilizing treatment until the hospital has provided the medical screening examination and initiated any further examination and treatment that may be required to stabilize the emergency medical condition.

VIII. Transfer of Individuals with an Emergency Medical Condition

- A. **Policy Statement.** The Hospital will not transfer an individual with an unstabilized emergency medical condition unless (i) the individual makes an informed request for the transfer; or (ii) a physician certifies that the medical benefits reasonably expected from the provision of treatment at the receiving facility outweigh the risks to the individual from the transfer. The Hospital must provide additional examination and treatment within its capacity as may be required to stabilize the emergency medical condition until the individual leaves the Hospital.
- B. **Requirements for an Appropriate Transfer.** An individual with an unstabilized emergency medical condition may be transferred only if the Hospital complies with *all* of the following standards:
- (1) The Hospital provides medical treatment within its capacity to minimize the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child; the medical record will reflect the vital signs and condition of the individual at the time of the transfer;
 - (2) The receiving facility has available space and qualified personnel for treatment of the individual; and the receiving facility and receiving physician have agreed to accept the individual and to provide appropriate medical treatment;
 - (3) The Hospital sends to the receiving facility all medical records (or copies thereof) available at the time of transfer related to the emergency medical condition of the individual, including (i) records related to the individual's emergency condition; (ii) the individual's informed written consent to transfer or the physician certification (or copy thereof); and (iii) the name and address of any on-call physician who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment; and
 - (4) The transfer is effected using proper personnel and equipment, as well as necessary and medically appropriate life-support measures.
- C. **Transfers for Off-Site Tests.** If an individual who has or may have an emergency medical condition is transferred to another facility for a test with the intention of the individual returning to the Hospital after the test, the Hospital will effect an appropriate transfer.
- D. **Department Policies.** Each dedicated emergency department and other departments of the Hospital that transfer individuals with emergency medical conditions will adopt policies and procedures that describe the procedures for the transfer of individuals and documentation of the transfer,

and conduct ongoing, in-service training of dedicated emergency department personnel.

- E. **Disputes.** The treating physician is responsible to determine whether an individual is stabilized and the mode of transportation for the transfer.

IX. Refusal of Emergency Services or Transfer

- A. **Policy.** An individual retains the right to refuse necessary stabilizing treatment and further medical examination, as well as a transfer to another facility.
- B. **Refusal of Medical Screening Examination.** If an individual leaves the Hospital before receiving a medical screening examination, either with or without notice to staff of his/her departure, staff should document the circumstances and reasons (if known) for the individual's departure and the time of departure.
- C. **Refusal of Further Examination or Stabilizing Treatment.** If an individual who has received a medical screening examination refuses to consent to further examination or stabilizing treatment, the Hospital must offer the examination and treatment to the individual, inform the individual of the risks and benefits of the examination and treatment and request that the individual sign a form that he/she has refused further examination or treatment.
- D. **Refusal of a Transfer.** An individual offered a transfer by the Hospital to another medical facility in accordance with the EMTALA requirements and the Hospital has informed the individual (or his/her representative) of the risks and benefits to the individual of the transfer, the individual (or his/her representative) may refuse the transfer. The Hospital must take all reasonable steps to secure the individual's (or his/her representative's) written informed consent to the refusal of the transfer.

X. Acceptance of Transfers

- A. **Policy Statement.** The Hospital has the obligation to accept an appropriate transfer of an individual with an unstabilized emergency medical condition who requires specialized capabilities or facilities if the Hospital has the capacity to treat the individual.
- B. **Policies and Documentation.** Each department of the Hospital that is contacted to accept emergency patient transfers will have policies and procedures for receiving inquiries from other facilities, including documentation of calls, the names (if known) and conditions of individuals, the outcomes of the calls and the reasons if the Hospital refuses to accept the transfer.

- C. **Disputes.** The treating physician is responsible to determine whether an individual is stabilized and the mode of transportation for the transfer.

XI. Quality Improvement

Monitoring EMTALA compliance is a responsibility of Hospital administration, the medical staff, department heads, performance improvement and risk management. The Hospital and medical staff will adopt a monitoring program to evaluate the conduct of the medical screening examinations, transfers, on-call coverage and other areas for which the Hospital determines the need for oversight in order to maintain compliance with the EMTALA obligations.