

Next Review Date: 6/01/2022

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SCOPE

Individuals requiring Emergency Services at West Jefferson Medical Center.

PURPOSE

To provide emergency medical treatment to individuals in compliance with section 1921 of The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and Section 1867 of the Social Security Act, commonly known as the Emergency Medical Treatment and Active Labor Act (EMTALA).

Responsibilities

1. The Emergency Department within its capability provides for an appropriate medical screening examination of any individual, regardless of payer class, who presents himself or herself at the Emergency Department and requests (or has a request made on his or her behalf) either examination or treatment for a medical condition.
2. The purpose of the medical screening examination is to determine whether the individual has an "emergency medical condition" or is in "labor".
3. A hospital needs to report to CMS or the State Survey Agency any time it has reason to believe it may have received an individual who has been transferred in an unstable medical condition from another hospital.

Departments Affected

Emergency Department
Labor and Delivery

Definitions

1. **Emergency Medical Condition** - The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:
 - a) placing the patient's health in serious jeopardy
 - b) serious impairment to bodily functions
 - c) serious dysfunction of any bodily organ or part
 - d) risks to unborn child
2. **Labor** -The term "labor" pertains to a pregnant woman having contractions.
3. **Stabilize** - the term "to stabilize" means, with respect to an emergency medical condition, to 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 the transfer of the individual from a facility.
4. **Stabilized** -The term "stabilized" means, with respect to an emergency medical condition, that no material deterioration of the condition is likely within reason-able medical probability to result from the transfer of the individual from a facility.
5. **Transfer** - the term "transfer" means the movement (including the discharge) of a patient outside a 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 a patient who, (a) has been declared dead, or (b) leaves the facility without the permission of any such person.

POLICY

Requirements of EMTALA:

1. Any hospital that has an emergency room is required to:
 - a) provide an appropriate medical screening examination within the capability of the Emergency Department and any ancillary services "routinely" available to the Emergency Department for any individual (whether or not a Medicare beneficiary) who presents at the hospital, and for whom a request is made on the individual's behalf, for examination or treatment to determine if the individual has an "emergency medical condition" or is in "labor".
 - b) if the individual has an "emergency medical condition" or is in "labor", the hospital must:
 - i) provide for any further medical examination or treatment that may be necessary to stabilize the medical condition or to provide for treatment of the labor within the staff and facilities available at the hospital; or
 - ii) provide for the transfer of the individual to another facility in accordance with the provisions of EMTALA;
 - c) specialized facilities (such as burn units, shock-trauma units, NICU and regional centers) cannot refuse to accept transfers which require specialized treatment for any reason other than lack of capacity;
 - d) the hospital may not delay medical examination or treatment in order to inquire about the individual's method of payment or insurance status.
2. EMTALA expressly prohibits a hospital from transferring a patient who has an emergency medical condition or who is in labor until the patient is stabilized unless:
 - a) the patient or his legal representative requests that a transfer be made,
 - b) a physician must certify in writing that the expected benefits from medical treatment at another facility outweigh the increased risks to the patient's condition from effecting the transfer:
 - i) a written "Informed Refusal" to treatment or transfer and-or a written "Informed Consent to Transfer" must be obtained after having been informed of the hospital's responsibility and the risks and benefits of the transfer;
 - (1) Informed Refusal - a patient-responsible party who refuses treatment must be advised of the risks and benefits of the proposed examination and treatment (see **Consent Form #10388 (v.4)**); and
 - (2) Informed Consent to Transfer - a written informed consent to transfer must be obtained after the patient-responsible party has been informed of the hospital's responsibility and the risks and benefits of transfer (see **Consent Form #10388 (v.4)**).
3. An appropriate transfer must meet the following four criteria's:
 - a) the receiving facility must have available space and qualified personnel for the treatment of the patient and must agree to accept transfer and provide treatment;
 - b) the transferring hospital must provide the receiving facility with all medical records or copies of medical records relating to the patient's emergency condition which are available at the time of transfer along with the patient's consent or the physician's certification and the name(s) and address of any on-call physician(s) who refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;
 - c) the transfer must be accomplished through the use of qualified personnel and transportation equipment, including medically appropriate and necessary life support measures; and
 - d) the transfer must comply with any other requirement the Secretary of Health and Human Services (Secretary) may establish.

Penalties

1. Any physician, including on-call, can be penalized by inappropriate transfer or transfer necessitated by refusal to treat. The hospital-based physician, that transfers a patient because

- the on-call specialist is not available, is not penalized if it is determined that without the services of the on-call physician, the benefits of transfer outweigh the risks of transfer.
2. A "whistle-blower" (informer) protection prevents hospitals from penalizing a physician who refuses to authorize transfer when the physician believes the condition has not been stabilized.
 3. Physician penalty attaches when a physician misrepresents the hospital's obligation towards an emergency patient or signs a certification when he knows or should know that the risk of transfer outweighs the benefit.
 4. Civil Monetary Penalties - a knowing violation by a participating hospital and the responsible physician in that hospital subjects each party to a civil monetary penalty of up to \$50,000 per violation.
 5. Sanctions on Provider Agreement - a hospital's willful or negligent failure to comply with the medical screening, stabilization and transfer requirement of EMTALA subjects it to the termination of its Medicare Provider Agreement, or give the Secretary the option to suspend the Provider Agreement for a period of time.
 6. Civil Enforcement - legislative authorization for two civil causes of action with two year statute of limitations:
 - a) an individual who suffers personal harm as a direct result of a participating hospital's violation of EMTALA requirements may bring a civil suit against the hospital for personal injury damages under the law of the state in which the hospital is located, as well as for any appropriate equitable relief; and Treatment in the E.R. any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of any EMTALA requirements may bring a civil suit to obtain damages for that loss, as well as for any appropriate equitable relief.

NOTE: Refer to Emergency Department Policies and Procedures for specific details.

See attached COBRA '89 Guidelines, **Consent Form #10388 (v.4)** Section 1395dd; Examination and Treatment for Emergency Medical Conditions and Women in Labor

Medical Screening Requirements

In the case of a hospital that has a hospital emergency department, including ancillary services routinely available to the emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department to determine whether or not an emergency medical condition (within the meaning of subsection (e) (1) of this section) exists within the meaning of subsection (e) (2).

Necessary Stabilizing Treatment For Emergency Medical Conditions And Labor

1. In general, if any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either
 - a) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or
 - b) for transfer of the individual to another medical facility in accordance with the section on restricting transfers until individual stabilized.
2. Refusal to Consent to Treatment - A hospital is deemed to meet the requirement of paragraph (1) (A) with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment but the individual (or a person acting on the individual's behalf) refuses to consent to the examination and treatment. The hospital shall take all reasonable steps to

secure the individual's (or person's) written informed consent to refuse such examination and treatment.

3. Refusal to Consent to Transfer- A hospital is deemed to meet the requirement of paragraph (1) with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with subsection on restricting transfers until individual stabilized and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.

Restricting Transfers Until Individual Stabilized

Rule - If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e) (3) (B) of this section) the hospital may not transfer the individual unless.

1. the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligation under this section and of the risk of transfer, in writing, requests transfer to another medical facility.
2. a physician (within the meaning of section 1395x (r) (1) of this title), has signed a certification that, based upon the information available at the time of the transfer, 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 labor to the unborn child from effecting the transfer; or
3. if a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as defined by the Secretary in regulations) has signed a certification described in clause (ii) after a physician (as defined in section 1395x (r) (1) of this title), in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and
4. the transfer is an appropriate transfer (within the meaning of paragraph (2) to that facility. A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.
 - a) Appropriate transfer to a medical facility is a transfer
 - i) in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and,
 - ii) in the case of a woman in labor, the health of the unborn child;
 - iii) the receiving facility has available space and qualified personnel for the treatment of the individual, and has agreed to accept transfer of the individual and to provide appropriate medical treatment;
 - iv) in which the transferring hospital sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1) (A), and the name and address of any on-call physician (described in subsection (d) (2) (C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment.
 - v) in which the transfer is effected through qualified personnel and transportation equipment as required including the use of necessary and medically appropriately support measures during the transfer; and
 - vi) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals transferred.

Enforcement

1. As Required of Medicare Provider Agreement. if a hospital knowingly and willfully or negligently, fails to meet the requirements of this section, such hospital is subject to
 - a) termination of its provider agreement under this title in accordance with section 1395cc (b) of this title, or
 - b) at the option of the Secretary, suspension of such agreement for such period of time as the Secretary determines to be appropriate, upon reasonable notice to the hospital and to the public.
 - c) If a civil money penalty is imposed on a responsible physician under paragraph (2), the Secretary may impose the sanction described in section 1395u (j) (2) (A) of this title (relating to barring from participation in the Medicare program) in the same manner as it is imposed under section 1395u (j) of this title.
2. Civil Monetary Penalties
 - a) (A participating hospital that knowingly violates a requirement of this section is subject to a civil money penalty of not more that \$50,000 for each such violation. The provisions of section 1320a- 7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply with respect to a penalty or proceeding under section 1320a- 7a (a) of this title.
 - b) Subject to subparagraph (C), any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of such an individual, and who knowingly violates a requirement of this section including a physician who.
 - i) signs a certification under subsection (c) (1) (A) of this section that the medical benefits reasonably to be expected from a transfer to another facility outweigh the risks associated with the transfer, if the physician knew or should have known that the benefits did not outweigh the risks, or
 - ii) misrepresents an individual's condition or other information, including a hospital's obligations under this section, is subject to a civil money penalty of not more than \$50,000 for each such violation and, if the violation is knowing and willful or negligent, to exclusion from participation in this subchapter and State health care programs. The provisions of section 1320a- 7a of this title (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to a civil money penalty and exclusion under this sub-paragraph in the same manner as such provisions apply with respect to a penalty, exclusion, or proceeding under section 1320a- 7a (a) of this title.
 - c) If, after an initial examination, a physician determines that the individual requires the services of a physician listed by the hospital on its list of on-call physicians (required to be maintained under section 1395cc (a) (1) (I) of this title) and notifies the on-call physician and the on-call physician fails or refuses to appear within a reasonable period of time, and the physician orders the transfer of the individual because the physician determines that without the services of the on-call physician the benefits of transfer outweigh the risks of transfer, the physician authorizing the transfer shall not be subject to a penalty under subparagraph (B). However, the previous sentence shall not apply to the hospital or to the on-call physician who failed or refused to appear.
3. Civil Enforcement
 - a) Personal Harm - Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.
 - b) Financial Loss to Other Medical Facility- Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for financial

loss, under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

4. Limitations on Actions - No action may be brought under this paragraph more than two years after the date of the violation with respect to which the action is brought.
5. The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in
 - a) 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,
 - b) serious impairment to bodily functions, or
 - c) serious dysfunction of any bodily organ or part; or
 - d) with respect to a pregnant woman who is having contractions
 - i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or
 - ii) that transfer may pose a threat to the health or safety of the woman or unborn child.
6. The term "participating hospital" means hospital that has entered into a provider agreement under section 1395cc of this title.
7. The term "to stabilize" means, with respect to an emergency medical condition described in paragraph item (3) under Definitions to 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 a facility, or, with respect to an emergency medical condition described in paragraph (5) (a) and (d), to deliver (including the placenta);
8. The term "stabilized" means, with respect to an emergency medical condition described in paragraph (4) under Definitions, 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 a facility, or, with respect to an emergency medical condition described in item (1) under definitions, that the woman has delivered (including the placenta).

EMTALA STATUTE: 42 USC 1395 dd

42 USC 1395dd. Examination and treatment for emergency medical conditions and women in labor; also known as Section 1867 of the Social Security Act; also known as Section 9121 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

Common names: COBRA, EMTALA, Anti-dumping law.