

## SAMPLE EMTALA POLICY

**[NOTE: This is a sample policy based on EMTALA regulations and Interpretive Guidelines. Specific application of the policy may depend on the hospital's capacity, capabilities, personnel, policies governing the provision of emergency care, and EMS protocols in the hospital's community. Hospitals should review their circumstances and modify the policy accordingly].**

### PURPOSE

To ensure that Hospital complies with the requirements of the Emergency Medical Treatment and Active Labor Act ("EMTALA") and associated regulations. (42 U.S.C. § 1395dd and 42 C.F.R. §§ 489.20, -.24). Additional information is available in the CMS Interpretive Guidelines available at <http://www.cms.hhs.gov/surveycertificationgeninfo/downloads/SCLetter08-15.pdf>

### APPLICATION

- 1. Location.** This Policy applies to the Hospital's main campus, including (1) any department on the Hospital's main campus; (2) Hospital property within 250 yards of the main buildings (e.g., parking lots, driveways and sidewalks); and (3) any Hospital-owned air or ground ambulance. This Policy does not apply to (1) off-campus facilities unless such facilities have a dedicated emergency department; or (2) facilities that are not controlled by the Hospital (e.g., physician offices on Hospital property).
- 2. Persons.** This Policy applies to persons who come to the Hospital seeking emergency care. It does not apply to (1) persons who have been admitted to the Hospital as patients (inpatients); or (2) persons who develop a potential emergency medical condition after they have begun receiving treatment as an outpatient (outpatients). Care for inpatients and outpatients shall be governed by separate policies and the applicable standard of care.

### POLICY

The Hospital shall comply with the emergency care obligations imposed by EMTALA. These obligations include the following:

- 1. Medical Screening Examination.** If a person comes to the Hospital and a request is made for their emergency care or, if the person is unable to communicate, a reasonable person would believe that the person is in need of emergency care, then *qualified medical personnel* will, within the Hospital's capability and capacity, conduct and document an *appropriate medical screening examination* reasonably calculated to identify an *emergency medical condition*.

***An appropriate medical screening examination*** should address the presenting symptoms and comply with current policies and procedures for assessment of those presenting symptoms, including but not limited to a history of the presenting problem; a documented physical examination of the involved area or system; and the use of on-call physicians and ancillary tests or services routinely available to the Hospital if needed to determine whether an *emergency medical condition* exists. The chart should document continued monitoring until the patient is stabilized or transferred.

***Emergency medical condition*** is a condition manifesting itself by acute and severe 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 (1) placing the health of the individual (including the health of an unborn child) in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part; or (2) with respect to a pregnant woman who is having contractions, that there is insufficient time to safely transfer the woman to another hospital before delivery, or the transfer may pose a threat to the health or safety of the woman or the unborn child. A woman having contractions is presumed to be in labor unless *qualified medical personnel* certify, after a reasonable time of observation, that the woman is in false labor.

**Qualified medical personnel.** Hospital's governing body hereby designates the following as medical personnel qualified to perform a medical screening examination on emergency department patients as required by EMTALA: (1) physicians, (2) midlevel providers (e.g., PAs, NPs, and other advance practice nurses) acting within the scope of their licensure; and (3) registered nurses (RNs), if and only to the extent that the nature of the patient's request for examination and treatment is within the scope of practice of the RN (e.g., a request for a blood pressure check and that check reveals that the patient's blood pressure is within normal range). In the case of RNs, if the nature of the patient's request for examination and treatment involves independent medical diagnosis or treatment outside the RN's scope of permissible practice, the RN shall contact the physician or midlevel to complete the examination and/or arrange for an appropriate transfer of the patient to another facility consistent with EMTALA requirements and this policy.

**2. Stabilizing Treatment.** If the *medical screening examination* indicates that the person has an *emergency medical condition*, the Hospital will provide: (1) treatment within the capabilities of the staff and facilities routinely available at the Hospital (including on-call physicians and ancillary services routinely available) as required to *stabilize* the person before the person is discharged or transferred to another facility; or (2) an *appropriate discharge or transfer* as described below.

**3. Appropriate Discharge or Transfer.**

**A. Stabilized person.** If the person is *stabilized*, the Hospital may discharge or transfer the person as appropriate. The person's *stabilized* condition should be documented in the medical records. A person is deemed *stabilized* under the following circumstances:

(1) **For discharge:** if the person does not need continued care, or no material deterioration is likely to result if the patient receives continued care as an outpatient or later as an inpatient and the patient is given a plan for appropriate follow-up care.

(2) **For transfer to another facility:** if the person's emergency medical condition is resolved, although the underlying medical condition may remain, and/or no material deterioration of the person's condition is likely to result from or occur during the transfer.

(3) **For a pregnant woman having contractions:** if the woman has delivered the child and the placenta, or has been determined by *qualified medical personnel* to be in false labor after a reasonable period of observation.

(4) **For psychiatric conditions:** if the person is not in danger of harming themselves or others, or they are protected from harming themselves or others.

**B. Unstabilized person.** If the individual is not *stabilized*, the Hospital will not discharge or transfer the person unless the following conditions are met:

(1) **Patient's consent or physician certification.** The Hospital may transfer or discharge an unstabilized patient if: (1) the person requests in writing a discharge or transfer to another facility after being informed of the Hospital's EMTALA obligations and the risks of discharge or transfer (*see Patient Treatment Consent/Request/Refusal Form*); (2) a physician certifies in writing that the benefits of discharge or transfer outweigh the risks (*see Patient Transfer or Discharge Form*); or (3) if a physician is not physically present, a *qualified medical person* consults with a physician and certifies in writing that the benefits of discharge or transfer outweigh the risks. The physician must subsequently countersign the certification. (*See Patient Transfer or Discharge Form*).

(2) **Appropriate transfer.** If an individual is to be transferred to another medical facility, the Hospital will: (1) provide medical treatment within its capacity that minimizes the risk to the individual's health or the health of the unborn child during transfer; (2) contact the receiving hospital to confirm that the receiving hospital has the space and personnel to receive the transfer and that the receiving hospital agrees to receive the transfer; (3) send copies of all medical records related to the

emergency condition for which the person presented; and (4) arrange for transfer by qualified personnel and appropriate equipment.

**4. Persons Presenting Away from the Emergency or Labor and Delivery Departments.** If a person presents at a Hospital department other than the Emergency or Labor and Delivery Departments, and a request is made for examination or treatment for a potential emergency medical condition or, if the person is unable to communicate, a reasonable person would believe that the person needs emergency care, then Hospital personnel should do the following: (1) provide such emergency care as the circumstances, experience, and training of the Hospital personnel would allow; and (2) immediately call the Emergency Department for direction and appropriate disposition. The Emergency Department may dispatch *qualified medical personnel*, transport the individual to the Emergency Department, and/or take such other action that is in the person's best interests.

**5. Acceptance of Patient Transfers.** Requests for patient transfers to the Hospital should be received and addressed by **[IDENTIFY POSITION]**. The Hospital will not refuse to accept the transfer of an individual to the Hospital for emergency care if: (1) the individual requires the Hospital's specialized capabilities or facilities (including but not limited to **[IDENTIFY ANY SPECIALIZED CAPABILITIES]**) unless the Hospital lacks the capacity to treat the individual, or (2) the individual is in an ambulance *en route* to the Hospital unless the Hospital is on diversionary status.

**6. Air or Ground Ambulance.**

**A. Ambulance owned by the Hospital.** The foregoing provisions apply to persons who are in an ambulance owned or operated by the Hospital for purposes of receiving emergency care in the Hospital's dedicated emergency department. If the ambulance is *en route* to the Hospital, the ambulance will not be diverted to another facility unless: (1) the diversion is in the person's best interests and the Hospital complies with the requirements for *an appropriate transfer* identified above; or (2) the transfer is appropriate pursuant to a community-wide EMS protocols.

**B. Ambulance not owned by the Hospital.** An ambulance that is not owned by the Hospital but that is *en route* to the Hospital will not be diverted to another facility unless the Hospital is on diversionary status.

**7. Patient's Refusal to Consent.** The person has the right to refuse examination, treatment, or an appropriate transfer. In such cases, the Hospital will: (1) offer the individual the examination, treatment, or transfer required by EMTALA and document in the medical records the examination, treatment or transfer that was refused; (2) explain to the individual the risks and benefits of the examination, treatment, or transfer, and document that such risks and benefits were explained; (3) take reasonable steps to obtain the individual's written informed refusal (*see Patient Treatment Consent/Request/Refusal Form*); and (4) if the individual refuses to sign a written informed refusal, the Hospital will document the foregoing, including the steps it took to obtain the individual's written informed refusal.

**8. No Delay in Examination or Treatment.** The Hospital will not delay the emergency care described above in order to inquire about the individual's method of payment or insurance status. Reasonable registration processes may be followed (including asking for insurance information) if they do not delay or discourage the person from receiving the emergency care described above. Preauthorization will not be sought from insurers or primary care physicians before providing the examination and, where necessary, initiating stabilizing treatment as described above.

**9. No Discrimination in Examination or Treatment.** The Hospital will provide the emergency care described above without regard to an individual's age, sex, race, color, national origin, handicap, diagnosis, or financial status, except to the extent that a circumstance is medically significant to the provision of appropriate medical care.

**10. On-call physicians.**

**A. On-call list.** The Hospital will maintain a list of on-call physicians who are available to assist the Hospital in providing emergency care as described above. If a *medical screening examination* indicates that a person has an *emergency medical condition* requiring the services of an on-call physician, the Hospital shall contact the on-call physician to provide necessary consultation. The on-call physician shall respond in within [\_\_\_\_] minutes unless circumstances prevent an earlier response. The physician may respond by telecommunication, provided that the physician shall present at the Hospital if requested by the emergency room physician or *qualified medical personnel*.

**B. On-call physician's failure to respond.** If an on-call physician fails or is unable to respond in a timely fashion, the Hospital will: (1) contact an alternative or back-up physician from the on-call list, if any; (2) if no alternative or backup physicians are available and the person needs emergency care that is not available at the Hospital, arrange for an *appropriate transfer* to another hospital or medical facility as described above; (3) send the name and address of the on-call physician who refused or failed to respond within a reasonable time to the receiving hospital or medical facility; and (4) notify **[IDENTIFY ENTITY]** of the physician's failure to timely respond so that appropriate action may be taken depending on the circumstances, which action may include corrective action against the physician or the physician's privileges.

**11. Reporting Suspected Violations.**

**A. Violation by Hospital.** If any person associated with the Hospital has reason to believe that the Hospital has violated this policy or EMTALA, they should immediately report the facts and circumstances to **[IDENTIFY PERSON]**.

**B. Violation by a different facility.** If any person associated with the Hospital has reason to believe that an individual has been transferred to the Hospital by another facility in violation of EMTALA, they shall promptly report the incident to **[IDENTIFY RECIPIENT OF INFORMATION]**. If, after an appropriate investigation, it is determined that a violation has occurred, the **[IDENTIFY RECIPIENT]** shall report the suspected violation to CMS or the Idaho Bureau of Facility Standards.

**12. No Retaliation.** The Hospital will not take adverse action against a physician or other *qualified medical personnel* because they refuse to authorize the transfer of an individual with an emergency medical condition that has not been stabilized, or against any hospital employee because the employee reports an EMTALA violation.

**13. Signs and Records.** The Hospital will maintain the following signs and records:

**A. EMTALA signs.** The Hospital will post conspicuously signs explaining individuals' EMTALA rights in the Emergency Department, Labor and Delivery Department, and other areas where individuals are likely to wait for examination or treatment.

**B. Medicaid signs.** The Hospital will post conspicuously information indicating whether the Hospital participates in Medicaid.

**C. Transfer records.** The Hospital will maintain for five (5) years medical and other records related to individuals transferred or discharged to or from the Hospital.

**D. Central log.** The Hospital will maintain a central log on each individual who comes to the Hospital seeking assistance and whether he or she refused treatment, was refused treatment, or whether he or she was transferred, admitted and treated, stabilized and transferred or discharged. The Hospital will also maintain in the log information for those individuals who come to an *off-campus departments* seeking examination or treatment of a *potential emergency medical condition*.

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Governing Body