EMTALA

EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT

Background

There are two primary bodies of law affecting the delivery of emergency medical services in the State of Missouri: (1) The state's trauma statute and regulations and (2) the federal Emergency Medical Treatment and Active Labor Act ("EMTALA").

State Regulations

The state trauma statute and related EMS regulations published in the Missouri Code of State Regulations ("CSR") set criteria under which hospitals may *voluntarily* obtain state designation as a Level I, Level II, or Level III trauma center. There is nothing in the statute or the CSR that either mandates or prohibits a hospital from accepting trauma cases. For all practical purposes, state law requires ambulances to take trauma cases to the nearest designated trauma center. Each ambulance service must operate under approved EMS protocols that describe what constitutes trauma. The personnel on board the ambulance are responsible for making the field assessments and determining whether their patient has suffered trauma of the type that would require transportation to a designated trauma center. The decision where to transport for a patient in the field is for the ambulance crew to make in accordance with state EMS regulations.

The CSR also governs the practice of "diversion." "Diversion" is a status that occurs when a hospital determines that it is unable to provide emergency medical services. The inability could be attributable to any cause, such as utility interruption, loss of diagnostic capabilities (CT down), being presently overrun with patients, or nonavailability of needed specialists. There is a computerized system used by Missouri hospitals to declare themselves to be on diversion status.

EMTALA

The Emergency Medical Treatment and Active Labor Act was passed to ensure access to emergency services regardless of the patient's ability to pay. The requirements of EMTALA are imposed on hospital's that participate in the Medicare program as a condition of participation. EMTALA requires that any hospital that provides emergency services perform a medical screening exam when a patient, or someone on a patient's behalf, requests examination or treatment for a medical condition. That screening exam determines whether the patient has an emergency medical condition. If an emergency medical condition exists, the hospital is required to stabilize the patient before discharge or transfer. Southeast Hospital is a "rural referral center" for purposes of the Medicare program. Under EMTALA a rural referral center CAN NOT refuse to accept an incoming transfer unless it does not have the capability or capacity to treat the patient.

EMTALA's definition of an Emergency Medical Condition ("EMC") is *a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in placing the health of an individual in serious jeopardy, serious impairment of bodily functions, serious dysfunction of any bodily organ*

or part or presents a likelihood of serious harm to self or others. In respect to a pregnant woman who is having contractions, there is inadequate time to effect a safe transfer to another hospital before delivery; or that transfer may post a threat to the health or safety of the woman or the unborn child.

"Capability" and "capacity" are key to EMTALA analysis. They encompass a variety of resources needed to provide emergency care, including adequate personnel (including physician specialists on-call), available inpatient beds, and diagnostic equipment. If a hospital's emergency department is so overwhelmed with patients that it cannot possibly deal with another emergency, then this would also constitute a lack of capacity. Generally, "lack of capacity" is the only acceptable reason for refusing a patient. The hospital's obligation is to stabilize the patient within its capabilities. If the patient cannot be stabilized because of a lack of capability, then the hospital is obligated to transfer the patient to another hospital that does have the capability. This raises the issue of "lateral transfers." It is inappropriate to transfer a patient to another facility that has no more capability than the transferring hospital.

Capability includes specialty physicians' on-call. For purposes of EMTALA, if a needed specialist is on-call and not otherwise prevented from coming to the emergency department, then the capability to treat exists insofar as it relates to that specialty. The E.D. physician must determine how long he can safely wait before contacting another hospital for the purpose of making a transfer in order to obtain the needed specialist. Issues of physician convenience, physician preference or the availability of a better qualified physician of like specialty at another hospital are irrelevant. An on-call physician who has been requested by the ED to come to the hospital to see a patient cannot refuse to come. Further, the fact that another hospital is a designated trauma center is likewise irrelevant to EMTALA.

The decision when and where to transfer a patient already in another hospital's emergency department is for that E.D. physician who is with the patient to make in accordance with EMTALA. These decisions cannot be second guessed or overruled by the receiving hospital.

The only acceptable reasons for refusing to accept an incoming patient are, for example:

- No physician of the needed specialty is on-call.
- The specialist on-call is presently in a case and will not be finished in time to assess the incoming patient (rounding, pre-op, or post-op is not enough).
- The diagnostic capabilities needed for the incoming patient are not available. Example, for an incoming neurological injury the only CT scanner is down.
- The hospital's emergency department is so completely overwhelmed with seriously ill patients to the extent that no ER doctor can leave one patient to examine the incoming emergent patient. (This should indicate a need to declare diversion status.)

The decision of the referring doctor (who has examined the patient) is final on the issue of whether the patient has an EMC, regardless of whether you believe that assessment is right or wrong. Disagreeing with the referring doctor's assessment or thoroughness of examination will not avoid a physician's responsibility or liability under EMTALA.

Additionally, any known previous history of the patient is irrelevant. For example, being familiar with the patient and the physician believes the patient is a chronic malingerer or frequent visitor does not relieve a physician of their obligation to examine the patient.

Documentation and Reporting - EMTALA has numerous documentation and reporting requirements. Two of them that are particularly important as it relates to transfers are as follows:

1. If it is necessary to transfer a patient to another hospital because the on-call specialist does not come and evaluate the patient, then the transferring hospital must, **as part of the information provided to the receiving hospital, provide the name and address of the specialist who failed to come in.** 42 CFR § 489.24 (e) (2) (iii).

2. A hospital that receives a patient in transfer from a hospital that fails to examine and stabilize the patient within its capabilities must report the transferring hospital to either the state surveyors who conduct investigations on behalf of CMS, or directly to CMS. Failure of the hospital that received the inappropriate transfer to report the other hospital is a separate EMTALA offense for which the hospital that treated the patient (the receiving hospital) may be fined.

Examine and Stabilize

In a nutshell, the receiving hospital's legal obligations under EMTALA are:

1. Examine the patient.
2. Determine if an emergency medical condition exists.
3. If no emergency medical condition is found after examination, then EMTALA no longer applies.
4. If an emergency medical condition exists, the hospital E.D. must stabilize the patient to the extent of its capabilities which may include summoning the appropriate specialist.
5. The specialist must then stabilize to the extent of his/her ability, which may include admitting or having the patient transferred to an institution with *greater capabilities if they are indicated in the specialist's judgment.*
6. Once the patient is admitted, or appropriately transferred to another facility, the EMTALA obligations are met.

"Stabilization" is treatment that assures, within reasonable medical probability, that a patient will suffer no material deterioration resulting from or occurring during a transfer. Stabilizing treatment must be provided within the capacity of the entire hospital facility and staff, not just those services routinely available in the emergency department. Stabilization does not mean that the patient does not require further medical treatment. Rather, it means that moving a patient from one hospital to another institution will not likely cause that patient injury.

Do not delay the medical screening examination and/or stabilizing treatment of a patient to inquire about the patient's insurance or payment status. Obtain or attempt to obtain written and

informed refusal of examination, treatment or an appropriate transfer in the case of a patient who refuses examination, treatment or transfer.

Access Center

All incoming patient transfer related calls are handled by the Southeast Access Center. This includes outside emergency room calls, in-house emergency room calls, outside hospitals requesting transfer, and outside clinics requesting transfer. The Access Center also determines the hospital's Capacity, according to established Southeast policies.

For outside emergency room calls, the Access Center will call the on-call physician specialist. The on-call physician must stay on the phone with the Access Center, who will facilitate the physician to physician conversation. If the on-call physician declines the patient, does not stay on the phone with Access Center, or does not allow the Access Center to connect the physician to physician call, then:

- The outside emergency room call will be connected to the Southeast emergency room physician by the access center staff.
- The emergency room physician will determine capability. If capability exists, the patient will be accepted into the emergency room.
- The declining on call physician will be called by a Medical Executive Committee officer.
- The decline will be reviewed by the Physician Excellence Committee.

If any assistance is needed or issues arise, the on-call administrator can be reached through the switchboard at 334-4822.

Transfer

If a hospital does not have the capacity or capabilities to stabilize or treat a patient, an appropriate transfer to another facility is permitted. A transfer is appropriate when the medical benefits of the transfer outweigh the medical risks of the transfer, as well as other regulatory requirements.

A patient presenting with an emergency medical condition will be transferred when:

1. The patient has been stabilized such that within reasonable medical probability, no material deterioration of the patient's condition is likely to result from the transfer, or
2. A physician or his designee has certified that based upon the information available at the time of treatment, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual or, in the case of a woman in labor, to the woman or the unborn child, or
3. The individual/legally responsible person requests the transfer, after being informed of the hospital's obligations and of the risk of transfer. Request must be in writing indicating reasons as well as indicate patient is aware of the risks and benefits of transfer.
4. The patient's needs are outside the limits of our organization's capability and/or capacity.

An inappropriate transfer or discharge of an individual with an EMC would be a violation of EMTALA. Any suspected EMTALA violations should be reported to the Chief Medical Officer.

Summary – Points to Remember

The EMTALA law requires hospitals to provide emergency treatment to anyone who seeks care, as well as provide an appropriate transfer when an emergency medical condition exists outside the hospital's capability or capacity.

- No doctor, nurse, or anyone else has authority to refuse an ambulance unless a determination has been made that the hospital does not have the capacity or capability to treat the patient.
- Unless the on-call specialist is already actively involved in another case or otherwise truly unable to respond, it is an EMTALA violation for an on-call specialist to refuse a request by an E.D. physician to come see a patient.

Penalties and Damages

Although EMTALA is part of the federal Medicare law, it pertains to all patients, including undocumented aliens. EMTALA investigations are partly state and partly federal in nature. If a complaint is filed at the state level (Missouri Department of Health and Senior Services) it will automatically be forwarded to the appropriate Regional Office of the United States Department of Health and Human Services (DHHS), Center for Medicare and Medicaid Services (CMS). Serious violations may be referred to the Office of Inspector General (OIG) for assessment of civil monetary penalties (the civil equivalent of a fine). Violations that indicate that the hospital's emergency medical services are so noncompliant as to jeopardize patient safety can result in suspension or expulsion from participating in the Medicare program. A hospital that negligently violates EMTALA is subject to a civil money penalty of up to $50,000 for each violation. Hospitals that fail to substantially meet the EMTALA requirements are also subject to suspension or termination of their Medicare and Medicaid provider agreements. If this ever occurred, the hospital would be prohibited from participating in the Medicare and Medicaid programs, which would make it impossible for the hospital to bill Medicare or Medicaid for treating patients covered by those programs.

A physician who is responsible for the examination, treatment, or transfer of an individual, including a physician on call, who negligently violates the law, is subject to a civil money penalty of up to $50,000 per violation. If the violation is gross and flagrant or is repeated, the physician is subject to exclusion from Medicare and Medicaid.

More information can be found in the medical staff bylaws. For assistance or questions contact the administrator on-call, Medical Staff Officer, or the General Counsel Office at 651-5505.

EMTALA (Emergency Medical Treatment and Active Labor Act)

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Signature Attesting to Understanding Date

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Printed Name

SoutheastHEALTH
12/10/2015