BON SECOURS MERCY HEALTH	**Title: EMTALA**	
	Approved by: Clinical Leadership Council	
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Responsible Party: Shelley R Pope / Amy Brock	Institution/Entities Applies to: All Bon Secours Mercy Health Entities
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1. POLICY:

Bon Secours Mercy Health ensures that individuals seeking examination or treatment at BSMH facilities subject to the Emergency Medical Treatment and Active Labor Act (EMTALA) will receive:

1. a Medical Screening Examination (MSE) by a physician or other Qualified Medical Personnel (QMP) to determine whether the individual has an Emergency Medical Condition (EMC); and, if so -

2. stabilizing treatment or an appropriate Transfer to another facility.

Refer to the Definitions section of this Policy for definitions of Dedicated Emergency Department, Emergency Medical Condition, Hospital Property, Qualified Medical Personnel, and Transfer.

2. EMTALA - WHEN DOES IT APPLY?

A. EMTALA applies when:

1. an individual comes to a **Dedicated Emergency Department (DED), including an off-campus DED**, and requests examination or treatment for a medical condition. An individual "requests examination or treatment" if he/she makes the request, someone else makes the request on the individual's behalf, or a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment.

2. an individual comes onto **Hospital Property (see definition of Hospital Property)** and requests examination or treatment for an EMC. An individual "requests examination or treatment" if he/she makes the request, someone else makes the request on the individual's behalf, or a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment.

3. an individual is in a hospital-owned or operated ground or air ambulance even if the ambulance is not on hospital property;

4. an individual is in a non-hospital owned ground or air ambulance that has come onto Hospital Property for treatment at the hospital's emergency department.

   Ambulance diversion - the hospital may direct an ambulance to another facility if the hospital is in "diversionary status," that is, it does not have the staff or facilities to accept any additional emergency patients. If, however, an ambulance provider disregards the hospital's diversion instructions and transports the individual onto Hospital Property, the individual is considered to have come to the emergency department and EMTALA applies.

5. Born-Alive Infant Protection Act – EMTALA applies to an infant at the time of birth, including in the labor and delivery unit. A newly born infant is presumed to be presenting with an emergency medical condition and requires a medical screening examination to determine necessary stabilizing treatment. As long as an infant has an unstabilized emergency medical condition in need of stabilizing treatment, EMTALA continues to apply. If the hospital has the capabilities to stabilize the emergency medical condition, it is required to do so. If not, the hospital must arrange an appropriate transfer of the infant to a hospital with specialized capabilities and capacity, while providing care until the transfer is effectuated. Once the infant is admitted in good faith to stabilize the emergency medical condition, EMTALA no longer applies.

B. A hospital's EMTALA obligation ends, or EMTALA does not apply when:

1. a physician or other QMP has performed the MSE and determined the individual does not have an EMC;

2. an individual's EMC has been "stabilized" as defined in Step 2 of the Procedure section of this Policy.

3. an individual has been admitted (in good faith) as an inpatient;

4. an individual leaves against medical advice or without being seen, on his or her own free will (with no suggestion, recommendation, or coercion by any clinician, employee or volunteer at the hospital);

5. an outpatient comes to the hospital (in a location other than the ED) and has begun to receive a scheduled outpatient service;

6. an individual comes to an off-campus hospital facility that is not a DED.

3. PROCEDURE:

Step 1: Perform an Appropriate Medical Screening Examination

Rule: Individuals who come to a DED, or onto Hospital Property, or who are in a hospital-owned or operated ambulance and request examination or treatment will receive an appropriate MSE to determine whether or not the individual has an EMC.

The MSE be must performed by a physician or other Qualified Medical Personnel.

An appropriate MSE is one that is sufficient to determine, with reasonable clinical confidence, whether an individual has an EMC. A MSE is more than mere triage. Depending on the patient's signs and symptoms, a MSE may be simple - involving only a brief history and physical examination - or more complex involving ancillary studies or procedures such as lumbar punctures, laboratory tests, CT scans, and/or other diagnostic tests and procedures. A MSE should be similar for all patients presenting with similar signs and symptom.

Minors - if a minor seeks care for an EMC, do not wait for parental consent to perform the MSE.

Do not delay MSE for payment/insurance verification - Registration may follow reasonable registration processes which typically consist of gathering insurance information, demographics, emergency contacts and other relevant information but may not:

(i) delay examination or treatment;
(ii) inquire about an individual's ability to pay or verify insurance /payment information until the MSE is completed;
(iii) discourage a patient from receiving care.

Step 2: If the individual has an Emergency Medical Condition, provide stabilizing treatment or an appropriate Transfer.

When does an individual have an Emergency Medical Condition? - an individual has an Emergency Medical Condition if his/her medical condition manifests 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 --

1. 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;
2. serious impairment to bodily functions; or
3. serious dysfunction of any bodily organ or part; or
4. 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 the unborn child.

Rule: If an individual has an Emergency Medical Condition, the hospital will either -

1. stabilize the medical condition through further examination and treatment within the capabilities of hospital's staff and facilities; or

2. Transfer the individual to another facility if the Transfer meets the Transfer criteria set forth below.

Stabilizing Treatment:

An individual with an EMC (other than a pregnant woman who is having contractions) is considered "stabilized" when no material deterioration of the individual's condition is likely, within reasonable medical probability, to result from or occur during the Transfer of the individual from a facility.

For a pregnant woman who is having contractions, the hospital must deliver the baby and placenta before the condition is considered "stabilized." A woman in labor may not be transferred to another facility unless she (or her legal representative) requests the Transfer or a physician signs a certification that the benefits outweigh the risks.

With respect to a psychiatric patient, the individual's EMC is considered "stabilized" when a physician determines the individual will not harm him/herself or others. (Source: CMS State Operations Manual)

Transfer to Another Facility

If an individual's EMC has not been stabilized, the individual will not be transferred to another facility unless:

1. the individual requests the Transfer (patient requested) or a physician certifies in writing that the benefits of the Transfer outweigh the risks (physician initiated); and

2. the Transfer meets the Transfer requirements described below.

Patient-Requested Transfer:

If a patient (or his/her legal representative) requests a Transfer, the hospital will:

1. inform the patient of the hospital's obligation to provide stabilizing treatment, and the medical risks of the requested Transfer; and

2. document the patient's request for Transfer in writing, including the reason(s) for the patient's request and the risks and benefits associated with the Transfer.

The individual (or his/her legal representative) must sign a written Request to Transfer.

Physician-Initiated Transfer:

A physician may initiate a patient Transfer by certifying, in writing, that the expected benefits of the Transfer outweigh the risks and providing a summary of the risks and benefits. In the case of a pregnant woman in labor, the physician must certify that the expected benefits outweigh the risk to both the pregnant woman and the unborn child.

Requirements for All Transfers:

Whether the Transfer is requested by the individual or a physician, the hospital must -

1. provide stabilizing treatment within its capability and capacity to minimize the risks of Transfer, which, in the case of a pregnant woman in labor, includes the health of the unborn child;

2. contact the receiving facility to obtain its acceptance of the Transfer and ensure it has space and qualified personnel, and document its communication with the receiving hospital, including the date and time of the Transfer request and the name and title of the person that accepted the Transfer;

3. send to the receiving facility medical records (or copies thereof) related to the EMC that are available at the time of the Transfer, including available history, observations of signs or symptoms, preliminary diagnosis, results of diagnostic studies or telephone reports of the studies, treatment provided, results of any tests and the informed written consent or physician's written EMTALA certification, 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 other records. Test results not yet available or historical records not readily available from the hospital's files must be sent as soon as practicable after Transfer;

4. ensure the Transfer is effected through qualified personnel and transportation equipment, including the use of necessary and medically appropriate life support measures during the Transfer. The sending physician is responsible for determining the appropriate mode, equipment and attendants for Transfer.

Patient Refusal to Consent to Transfer

For individuals who refuse to consent to a Transfer, hospital staff must inform the individual of the risks and benefits and document the refusal and, if possible, place a signed refusal to transfer in the individual's medical record. If an individual or the individual's representative refuses to be transferred and refuses to sign a statement to that effect, the hospital will document the refusal in the individual's medical record and, if possible, have the refusal witnessed by a second hospital employee's signature.

4. Individual Refuses to Consent to Treatment:

If an individual (or a person acting on the individual's behalf) refuses to be examined or treated after being explained the risks and benefit, attempt to secure the individual's (or the person acting on the individual's behalf) signature on a refusal to treat form. If unable to obtain such signature, ensure that the medical record includes:

1. the efforts that were made to try to secure the individual's signature on refusal to treat form;
2. a description of the examination and treatment that was offered but refused;
3. a statement that the individual (or person acting on the individual's behalf) was made aware of the risk and benefits of the examination and/or treatment.
4. the reason for the individual's refusal.

If an individual or the individual's representative refuses to consent to exam or treatment and refuses to sign a statement to that effect, the hospital will, if possible, have the refusal witnessed by a second hospital employee's signature.

5. Maintain List of On-Call Physicians:

The hospital will maintain a list of physicians on call to provide stabilizing treatment to patients seeking care under EMTALA. The hospital has the discretion to maintain the on-call list in a manner that best meets the needs of the hospital's patient in accordance with the resources available to the hospital.

Physician group names are not acceptable for identifying the on-call physician. Individual physician names are to be identified on the list with their accurate contact information.

Physicians on the on-call list must respond and provide the necessary stabilizing treatment within the time frame set forth in the applicable hospital's medical staff bylaws or rules and regulations but not to exceed 30 minutes. The decision of whether the on-call physician must come to the ED to assess/treat the patient is the decision of the treating physician in the ED, based on his/her medical knowledge and managing the particular condition.

An on-call physician has the option of sending a licensed non-physician practitioner (APN or PA) as his or her representative to appear at the hospital and provide further assessment or stabilizing treatment to an individual. This determination should be based on the individual's medical need and the applicable scope of practice laws, hospital by-laws and rules and regulations. The on-call physician is ultimately responsible for providing the necessary services regardless of who makes the in-person appearance. If the treating physician disagrees with the on-call physician's decision to send a licensed non-physician practitioner and requests the actual appearance of the on-call physician, the on-call physician is required to appear in person.

If a physician on the on-call list fails to respond, the hospital will record the name and address of the physician in the medical record. The physician may be subject to sanctions for violation of EMTALA.

6. Accepting Transfers from other Facilities:

A BSMH hospital with specialized capabilities or facilities (such as burn unit, trauma unit, NICU, psychiatric unit, etc.) not available at the transferring hospital will not refuse to accept a Transfer of an individual with an un-stabilized EMC from the transferring hospital so long as the BSMH hospital has the "capacity" to treat the individual. For example, if an individual is found to have an EMC that requires specialized psychiatric capabilities not available at the sending hospital, a psychiatric hospital that has the capacity is obligated to accept the Transfer.

Capacity" to render care is not reflected simply by the number of persons occupying a specialized unit, the number of staff on duty, or the amount of equipment on the hospital's premises. Capacity includes whatever a hospital customarily does to accommodate patients in excess of its occupancy limits. If a hospital has customarily accommodated patients in excess of its occupancy limits by whatever means (e.g., moving patients to other units, calling in additional staff, borrowing equipment from other facilities) it has, in fact, demonstrated the ability to provide services to patients in excess of its occupancy limits.

7. Posted Signage:

BSMH hospitals and off campus dedicated EDs shall post signs informing individuals (including woman in labor) of their rights under EMTALA. The signs must:

1. indicate whether the facility participates in the Medicaid program;
2. be clear and in simple terms and language(s) that are understandable by the population served by the hospital;
3. be posted in a place likely to be noticed by individuals entering the ED, as well as those individuals waiting for examination and treatment (e.g., entrance, admitting area, waiting room, treatment area).

8. Central Log

The hospital will keep a central log identifying each individual who came to the DED or elsewhere on Hospital Property seeking care and whether the individual:

1. refused treatment;
2. was refused treatment;
3. was transferred, or stabilized and transferred;
4. was admitted and treated; or
5. was discharged.

The hospital has the discretion to maintain the log in a form that best meets its needs. The central log should include, directly or by reference, patient logs from other areas of the hospital, such as pediatrics and labor and delivery where a patient might present for emergency services.

9. Record Retention:

The hospital will maintain medical and other records of individuals transferred to or from the hospital, including the Central Log referenced above, for 5 years from the date of the Transfer.

10. Mandatory Reporting when Receive an Improper Transfer:

A hospital that suspects it may have received an improperly transferred individual from another hospital is required to report the incident to CMS or the State Agency (i.e. Dept. of Health) within 72 hours of the occurrence. Contact your Corporate Responsibility Officer if you have reason to believe an individual was improperly transferred to a Bon Secours Mercy Health facility.

11. Off-Campus DED Obligations:

Off campus DEDs are subject to EMTALA and therefore must provide individuals with an appropriate MSE, stabilizing treatment and/or Transfer in accordance with this Policy.

12. Potential Policy Violations:

Associates should report potential Policy violations to the Corporate Responsibility Officer. Individuals who violate this Policy must be subject to corrective action in accordance with the ministry's policy on corrective action.

Definitions:

"Dedicated Emergency Department" or "DED" means any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

1. It is licensed by the State in which it is located under applicable State law as an emergency room or emergency department;
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 calendar year immediately preceding the calendar year in which a determination under this section is being made, based on a representative sample of patient visits that occurred during that calendar year, it provides at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

"Emergency Medical Condition" or "EMC" means 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 –

1. 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;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part; or
4. 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 the unborn child.

"Hospital Property" means the entire main hospital campus, including (1) the physical area immediately adjacent to the hospital's main buildings, (2) other areas/structures not strictly contiguous to the main buildings but located within 250 yards of the main buildings (including parking lots, sidewalks and driveways), and (3) any other areas determined on an individual case basis, by the CMS regional office, to be part of the hospital campus. "Hospital Property" does not include other areas/structures that are not part of the hospital, such as physician offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare, or restaurants, shops, or other nonmedical facilities.

"Qualified Medical Personnel" means credentialed health care practitioners deemed qualified and authorized to provide the Medical Screening Examination in the hospital's medical staff bylaws or rules and regulations.

"Transfer" means the movement (including the discharge) of an individual 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 an individual who (i) has been declared dead, or (ii) leaves the facility without the permission of any such person.

REFERENCES:

- 42 USC 1395(d)(d)
- 42 CFR 489.24
- 42 CFR 413.65
- CMS State Operations Manual, Interpretative Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases.