

Policy Title: Emergency Medical Treatment & Active Labor Act (EMTALA) Policy
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Section: Administrative/Operations
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I. Scope

This Policy applies to Medicare-participating BSMH hospitals that have an emergency department, including an emergency department located off the hospital's main campus. It also applies to a hospital-based urgent care center that qualifies as a Dedicated Emergency Department (DED), whether located on or off the hospital's main campus.

II. Policy

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

- A. 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 –
- B. 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, Medical Screening Examination, Qualified Medical Personnel, and Transfer.

III. Application of EMTALA

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 in the absence of a verbal request a prudent layperson observer would believe, based on the individual's appearance and/or behavior, that the individual needs examination or treatment;

2. an individual comes onto Hospital Property (see definition) 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 in the absence of a verbal request a prudent layperson observer would believe, based on the individual's appearance and/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; and/or
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,” meaning that it does not have the staff or facilities to accept 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 EMC and requires a MSE to determine necessary stabilizing treatment. As long as an infant has an EMC in need of stabilizing treatment, EMTALA continues to apply.
 - a. If the hospital has the capabilities to stabilize the EMC, it is required to do so. Once the infant is admitted to the hospital in good faith, EMTALA no longer applies.
 - b. If the hospital does not have the capabilities to stabilize the EMC, 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.

B. EMTALA does not apply or a hospital’s EMTALA obligation ends 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 (AMA) or without being seen, of his or her own free will (with no suggestion, recommendation, or coercion by any clinician, employee or volunteer at the hospital);
5. an individual presents to the hospital and solely requests services that are not for a medical condition, such as preventive care services (immunizations, allergy shots), or the gathering of evidence (blood alcohol test, sexual assault); the individual does not appear to need examination or treatment for a medical condition; and the individual signs a document (an AMA, LWBS, or other form) clarifying that he/she is not seeking medical examination or treatment;
6. an outpatient comes to the hospital (in a location other than the DED) and has begun to receive a scheduled outpatient service; or
7. an individual comes to an off-campus hospital facility that is not a DED.

IV. 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 must be performed by a physician or other QMP.

- A. 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 symptoms.
- B. Minors - if a minor seeks care for an EMC, do not wait for parental consent to perform the MSE.
- C. 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:
 1. delay the MSE and/or treatment to inquire about an individual's ability to pay;
 2. authorize or verify insurance/ payment information, until after the MSE is complete and stabilizing treatment for any EMCs has been initiated; or

3. discourage a patient from receiving care (for example, do not discuss the ED's wait time, ED staffing, the number of physicians and nurses available to see patients, wait times at other facilities, etc.).

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

Rule: If an individual has an EMC, the hospital will stabilize the EMC through further examination and treatment within the capabilities of the hospital's staff and facilities; if the hospital cannot stabilize the EMC, the hospital will Transfer the individual to another facility in accordance with the Transfer criteria set forth below in paragraph D.

- A. When does an individual have an Emergency Medical Condition (EMC)? - an individual has an EMC 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 and/or her unborn child(ren)) 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 –
 - a. That there is inadequate time to effect a safe transfer to another hospital before delivery; or
 - b. That transfer may pose a threat to the health or safety of the woman or the unborn child(ren).
- B. 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.
 1. 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.

2. 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)
- C. Individual Refuses to Consent to Examination and/or Treatment: If after being informed of the risks and benefits of examination and/or treatment, an individual (or a person acting on the individual's behalf) refuses examination and/or treatment, hospital staff must attempt to secure the individual's (or a person acting on the individual's behalf) signature on an AMA form. If unable to obtain such signature, hospital staff must ensure that the medical record includes:
1. the efforts that were made to try to secure the individual's signature on an AMA form;
 2. a description of the examination and treatment that was offered but refused;
 3. a statement that the individual (or a person acting on the individual's behalf) was made aware of the risks and benefits of the examination and/or treatment; and
 4. the reason for the individual's refusal.

When an individual or the individual's representative refuses to consent to examination 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.

- D. 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);
 2. the Transfer meets the requirements for All Transfers described below; and
 3. a BSMH EMTALA Transfer Form is fully completed by the transferring Physician and by Nursing in Epic.
 - a. Patient-Requested Transfer: If a patient (or his/her legal representative) requests a Transfer, the hospital will:
 - i. inform the patient of the hospital's obligation to provide stabilizing treatment, and the medical risks of the requested Transfer; and
 - ii. using the BSMH EMTALA Transfer Form in Epic, 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.

- iii. The individual (or his/her legal representative) must sign the written Request to Transfer.
- b. Physician-Initiated Transfer: A physician initiates a patient Transfer by certifying in writing, on the BSMH EMTALA Transfer Form in Epic, 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 risks to both the pregnant woman and the unborn child(ren).
- c. Requirements for All Transfers: Whether the Transfer is requested by the individual or initiated by a physician, the hospital must –
 - i. 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(ren);
 - ii. contact the receiving facility to obtain its acceptance of the Transfer and ensure it has space and qualified personnel; and then document 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;
 - iii. send to the receiving facility medical records (or copies thereof) related to the EMC that are available at the time of the Transfer, including but not limited to:
 - a) available history,
 - b) observations of signs or symptoms,
 - c) preliminary diagnosis,
 - d) results of diagnostic studies or telephone reports of the studies,
 - e) treatment provided,
 - f) results of any tests,
 - g) a printed copy of the fully completed BSMH EMTALA Transfer Form in Epic, containing the patient's informed consent and/or physician's written EMTALA certification,
 - h) 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
 - i) any other relevant records.

Test results not yet available and/or historical records not readily available from the hospital's files at the time of Transfer must be sent as soon as practicable after Transfer; and

- iv. 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.

4. 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.

V. On-Call Responsibilities

A. On-Call List: 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 patients 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.

B. Physician Responsibilities: While on-call, the on-call physician must:

1. Be immediately available and promptly respond, at least by telephone initially, to the treating physician in the ED ("ED Physician"). Having examined the patient, the ED Physician is best suited to, and shall, determine whether the on-call physician needs to come into the ED to examine and/or treat the patient. If the ED Physician requests that the on-call physician come to the hospital, the on-call physician shall come to the hospital within a reasonable period of time, which generally is expected to be within 30 minutes;
2. If a transfer center is utilized to contact the on-call physician about accepting a request for Transfer, the on-call physician must respond to the transfer center within a reasonable timeframe (generally within 30 minutes). All requests for transfer of an individual with an un-stabilized EMC must be accepted as long as the hospital has the capability and capacity to treat the patient (see section VI below);
3. The on-call physician has the option of sending a licensed non-physician practitioner (APN or PA) as his/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 an 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 must appear in person;

4. If an on-call physician fails or refuses to respond and/or appear within a reasonable timeframe, the hospital will record the physician's name and address in the medical record. The hospital and physician may be in violation of EMTALA and subject to sanctions; and
5. The on-call physician has a responsibility to notify the Medical Staff Office of changes to the on-call schedule.

VI. Accepting Transfers From Other Facilities

A BSMH hospital with specialized capabilities or facilities (such as burn unit, trauma unit, NICU, psychiatric unit, intensive care 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 hospital with a psychiatric unit/department 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.

VII. Posted Signage

- A. BSMH hospitals and off-campus DEDs shall post signs informing individuals (including women in labor) of their rights under EMTALA.
- B. The EMTALA signs must:
 1. indicate whether the facility does or does not participate in the Medicaid program;
 2. be clear and written in simple terms and language(s) that are understandable by the population served by the hospital;

3. be posted in places likely to be noticed by individuals entering the DED, as well as those individuals waiting for examination and treatment (e.g., entrance, admitting area, waiting room, treatment area); and

VIII. Central Log

The hospital will keep a central log –

- A. identifying each individual who comes to the DED or elsewhere on Hospital Property seeking care, and
- B. documenting 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.
- C. 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.

IX. 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.

X. Mandatory Reporting When an Improper Transfer Is Received

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 Compliance Officer if you have reason to believe an individual was improperly transferred to a Bon Secours Mercy Health facility.

XI. 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.

XII. Potential Policy Violations

Associates should report potential Policy violations to the Compliance Officer. Individuals who violate this Policy will be subject to corrective action in accordance with the Ministry's policy on corrective action.

XIII. 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(ren)) 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 –
 - a. That there is inadequate time to effect a safe transfer to another hospital before delivery; or
 - b. That transfer may pose a threat to the health or safety of the woman or the unborn child(ren).

“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.

“Medical Screening Examination” or “MSE” means an examination 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 symptoms.

“Qualified Medical Personnel” or “QMP” 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.

XIV. Attachments

XV. References

- 42 USC 1395dd
- 42 CFR 489.20(l), (m), (q), and (r)
- 42 CFR 489.24
- 42 CFR 413.65
- CMS State Operations Manual, Appendix V, Interpretative Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases.

XVI. Version Control

Version	Date	Description	Prepared By
2.0	8/15/2021	Policy updated and approved	EMTALA Committee, Compliance, Legal

This policy/procedure/guideline does not establish a standard of clinical care or practice or standard of non-clinical practice to be followed in every case. The policy/procedure/guideline should guide actions with the understanding that departures may be required at times.

Revised 04/01/2021 - Bon Secours Mercy Health adopts the above policy, procedure, policy & procedure, guideline, manual / reference guide / instructions, or principle / standard / guidance document for all Bon Secours Mercy Health entities including, but not limited to, facilities doing business as Mercy Health – St. Vincent Medical Center, Mercy Children’s Hospital, Mercy Health – St. Charles Hospital, Mercy Health – St. Anne Hospital, Mercy Health – Tiffin Hospital, Mercy Health – Willard Hospital, Mercy Health – Defiance Hospital, Mercy Health Allen Hospital LLC, Mercy Health - Lorain Hospital, Mercy Health St. Elizabeth Youngstown Hospital, Mercy Health St. Joseph Warren Hospital, Mercy Health - St. Elizabeth Boardman Hospital, Mercy Health - St. Rita’s Medical Center, Mercy Health – Springfield Regional Medical Center, Mercy Health - Urbana Hospital, Mercy Health - Anderson Hospital, Mercy Health - Clermont Hospital, Mercy Health – Fairfield Hospital, Mercy Health - West Hospital, The Jewish Hospital – Mercy Health, Mercy Health - Lourdes Hospital LLC, Mercy Health – Marcum and Wallace Hospital, Chesapeake Hospital Corporation DBA Rappahannock General, Maryview Hospital, Bon Secours Richmond Community, Bon Secours Memorial Regional Medical Center, Bon Secours – St. Mary’s Hospital, St. Francis Hospital, Inc., Bon Secours St. Francis Medical Center, Bon Secours Mary Immaculate Hospital, Southside Regional Medical Center, Bon Secours Mercy Health Franklin, LLC, and Southern Virginia Regional Medical Center (Emporia).