

## EMTALA - MODEL Facility Policy

**POLICY NAME:** Kentucky EMTALA – Transfer Policy

**DATE:** (facility to insert date here)

**NUMBER:** (facility to insert number here)

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This policy reflects guidance under the Emergency Medical Treatment and Labor Act (EMTALA) and associated State laws only. It does not reflect any requirements of The Joint Commission or other regulatory entities.

The definitions in the Company EMTALA Policy, LL.EM.001, apply to this and all other Company and facility EMTALA policies.

**PURPOSE:** To establish guidelines for either accepting an appropriate transfer from another facility or providing an appropriate transfer to another facility of an individual with an emergency medical condition (EMC), who requests or requires a transfer for further medical care and follow-up to a receiving facility as required by EMTALA, 42 U.S.C. § 1395dd, and all Federal regulations and interpretive guidelines promulgated thereunder.

**POLICY:** Any transfer of an individual with an EMC must be initiated either by a written request for transfer from the individual or the legally responsible person acting on the individual's behalf or by a physician order with the appropriate physician certification as required under EMTALA. EMTALA obligations regarding the appropriate transfer of an individual determined to have an EMC apply to any emergency department (ED) or dedicated emergency department (DED) of a hospital whether located on or off the hospital campus and all other departments of the hospital located on hospital property.

A hospital with specialized capabilities or facilities (including, but not limited to burn units, shock-trauma units, neonatal intensive care units, dedicated behavioral health units, or regional referral centers in rural areas) shall accept from a transferring hospital an appropriate transfer of an individual with an EMC who requires specialized capabilities if the receiving hospital has the capacity to treat the individual. The transferring hospital must be within the boundaries of the United States.

The transfer of an individual shall not consider age, gender, disability, race, color, ancestry, citizenship, religion, pregnancy, sexual orientation, gender identity or expression, national origin, medical condition, marital status, veteran status, payment source or ability, or any other basis prohibited by federal, state or local law, except to the extent that pre-existing medical condition or physical or mental handicap is significant to the provision of appropriate medical care to the individual.

The CEO must designate in writing an administrative designee by title responsible for accepting transfers in conjunction with a receiving physician. The CEO designee in conjunction with the ED physician has authority to accept the transfer if the hospital has the capability and capacity to treat the individual.

Note: Movement of an individual to another part of the same hospital is not considered a transfer for EMTALA purposes.

## 1. Transfer of Individuals Who Have Not Been Stabilized

- a. If an individual who has come to the emergency department has an EMC that has not been stabilized, the hospital may transfer the individual only if the transfer is an appropriate transfer and meets the following conditions:
  - i. The individual or a legally responsible person acting on the individual's behalf requests the transfer, after being informed of the hospital's obligations under EMTALA and of the risks and benefits of such transfer. The request must be in writing and indicate the reasons for the request as well as indicate that the individual is aware of the risks and benefits of transfer; or
  - ii. A physician has signed a certification that, based upon the information available at the time of transfer, 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 the woman in labor, to the woman or the unborn child, from being transferred. The certificate must contain a written summary of the risks and benefits upon which it is based; or
  - iii. If a physician is not physically present in the DED at the time the individual is transferred, a qualified medical person (QMP) has signed a certification after a physician in consultation with the QMP, agrees with the certification and subsequently countersigns the certification. The certification must contain a written summary of the risks and benefits upon which it is based.

Note: The date and time of the physician or QMP certification should match the date and time of the transfer.
- b. A transfer will be an appropriate transfer if:
  - i. The transferring hospital provides medical treatment within its capacity that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;
  - ii. The receiving facility has available space and qualified personnel for the treatment of the individual and has agreed to accept the transfer and to provide appropriate medical treatment;
  - iii. The transferring hospital sends the receiving hospital copies of all medical records related to the EMC for which the individual presented that are available at the time of transfer as well as 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
  - iv. The transfer is effected through qualified personnel and transportation equipment as required including the use of necessary and medically appropriate life support measures during the transport.

Hospitals that request transfers must recognize that the appropriate transfer of individuals with unstabilized EMCs that require specialized services should not routinely be made over great distances, bypassing closer hospitals with the necessary capability and capacity to care for the unstabilized EMC.

- c. Higher Level of Care. A higher level of care should be the more likely reason to transfer an individual with an EMC that has not been stabilized. The following are examples of a higher level of care:
  - i. A receiving hospital with **specialized capabilities or facilities** that are not available at the transferring hospital (including, but not limited to burn units, shock-trauma units, neonatal intensive care units, dedicated behavioral health units, or regional referral centers in rural areas) must accept an appropriate transfer of an individual with an EMC who requires specialized capabilities or facilities if the hospital has the capacity to treat the individual.
  - ii. If there is a local, regional or state plan for hospital care for designated populations such as individuals with psychiatric disorders or high-risk neonates, the transferring hospital must still provide an MSE and stabilizing treatment prior to transferring to the hospital so designated by the plan.

## 2. Additional Transfer-Related Situations

- a. Diagnostic Facility. If an individual is moved to a diagnostic facility located at another hospital for diagnostic procedures not available at the transferring hospital and the hospitals arrange to return the individual to the transferring hospital, the transfer requirements must still be met by the sending hospital. The receiving hospital is not obligated to meet the EMTALA transfer requirements when implementing an appropriate transfer back to the transferring hospital. The recipient hospital will send or communicate the results of the tests performed to the transferring hospital.
- b. Off-Campus hospital-based facilities to nonaffiliated hospital. A transfer from a hospital-based ED or DED located off-campus to a nonaffiliated hospital must still comply with the requirements of an appropriate transfer as defined by EMTALA. A Memorandum of Transfer must be used in such situations.

Note: Off-Campus Provider-based EDs or DED. A movement of a patient from an off-campus provider-based ED or DED to the main hospital ED is a movement and not a transfer.

- c. Pre-Existing Transfer Agreements. Appropriate transfer agreements should be in place and in writing between the hospital, including any outpatient or other off-campus departments where care is provided and other hospitals in the area where the outpatient or off-campus departments are located. Even if there are pre-existing transfer agreements between transferring and receiving hospitals, a physician certification is required for any medically indicated transfer for an unstable individual. Transfer Agreements shall not include financial provisions for transfer but may include reciprocal provisions for transferring the individual back to the original transferring hospital when the higher level of care is no longer required.
- d. Transfers for High Risk Deliveries. A hospital that is not capable of handling the delivery of a high-risk woman in labor must still provide an MSE and any necessary stabilizing treatment as well as meet the requirements of an appropriate transfer even if a transfer agreement is in place. In addition, a physician certification that the benefits of transfer outweigh the risks of transfer is required for the transfer of the woman in labor.

- e. Diversion/Exceeded Capacity. If the transferring hospital has the capability but lacks the capacity to treat the individual, then the individual would likely benefit from the transfer and it would be permissible if all other conditions of an appropriate transfer are met. In addition, the hospital may transfer an individual due to bed shortage or overcrowding, if it has exhausted all its capabilities, even if the individual does not require any specialized capabilities of the receiving hospital. The receiving hospital must accept the transfer of the individual if it has the capacity and capability to do so. In communities with a community-wide emergency services system, the receiving hospital must accept the individual being transferred from a hospital on diversionary status if it has the capacity and capability. After acceptance, the receiving hospital may attempt to validate that the transferring hospital has, in fact, exhausted all its capabilities prior to transfer.
- f. Lateral Transfers. Transfers between hospitals of comparable resources and capabilities are not permitted unless the receiving facility would offer enhanced care benefits to the patient that would outweigh the risks of the transfer. Examples of such situations include a mechanical failure of equipment or no ICU beds available.
- g. Women in Labor. For a woman in labor, a transfer may be made only if the woman in labor or her representative requests the transfer, or if a physician signs a certification that the benefits reasonably expected from the provision of appropriate medical treatment at another facility outweigh the increased risks to the individual or the unborn child. A hospital cannot cite State law or practice as the basis for transfer. A woman in labor who requests transfer to another facility may not be discharged against medical advice to go to the other facility. The risks associated with such a disposition must be thoroughly explained to the patient and documented. If the patient still insists on leaving to go to another facility, the facility should take all reasonable steps to obtain the patient's request in writing and take all reasonable steps to have the patient transported using qualified personnel and transportation equipment. Transporting a woman in labor by privately-owned vehicle is not an appropriate form of transportation.
- h. Observation Status. An individual who has been placed in observation status is not an inpatient, even if the individual occupies a bed overnight. Therefore, an individual placed in an observation status who came to the hospital's DED for example, does not terminate the EMTALA obligations of that hospital or a recipient hospital toward an individual who remains in unstable condition at the time of transfer. The EMTALA obligation does not end until the patient has been stabilized, appropriately transferred, or discharged. Therefore, any transfer of a patient in observation status who initially presented to a DED must meet all the requirements of an EMTALA transfer.

### 3. **Authority to Decline a Transfer Request**

Only the CEO, Administrator-on-Call (AOC), or a hospital leader who routinely takes administrative call has the authority to verify that the facility does not have the capability and capacity to accept a transfer. A transfer request which may be declined must first be reviewed with this individual before a final decision to refuse acceptance is made. This requirement applies to all transfer requests, regardless of whether the transfer request is facilitated by a PLC representative or the facility's CEO designee or ED physician. Individuals qualified to serve as an AOC include the CEO, CFO, CNO, COO, CMO, ECO, VP Quality and other senior leaders reporting directly to the CEO. Other individuals who may be qualified based on experience include an ACFO, ACNO, Associate Administrator or similarly titled individuals. In general, a department director is not qualified to serve as an

AOC. Additionally, a Nursing Supervisor, House Supervisor or other similarly titled position is not considered to be an equivalent of the AOC.

#### 4. **Authority to Conduct a Transfer**

The transferring physician is responsible for determining the appropriate mode of transportation, equipment and attendants for the transfer in such a manner as to be able to effectively manage any reasonably foreseeable complication of the individual's condition that could arise during the transfer. Only qualified personnel, transportation and equipment, including those life support measures that may be required during transfer shall be employed in the transfer of an individual with an unstabilized EMC. If the individual refuses the appropriate form of transportation determined by the transferring physician and decides to be transported by another method, the transferring physician is to document that the individual was informed of the risks associated with this type of transport and the individual should sign a form indicating the risks have been explained and the individual acknowledges and accepts the risks. All additional requirements of an appropriate transfer are to be followed by the transferring hospital.

#### 5. **Patient Logistics Center (PLC) Use**

Hospitals may utilize a PLC to facilitate the transfer of any individual from or to the Emergency Department of the transferring facility to the receiving facility. The transferring physician, after discussion with the individual patient or his or her legally authorized representative, determines the appropriate receiving facility for providing the care necessary to stabilize and treat the individual's emergent condition. The PLC then facilitates the transfer from the transferring facility to the facility selected by the transferring physician and/or the patient. A PLC does not: 1) diagnose or determine treatment for medical conditions; 2) make independent decisions regarding the feasibility of transfer; 3) make independent decisions as to where the individual will be transferred; or 4) determine how a transfer shall be affected.

The PLC may utilize algorithms developed with a facility to accept a transfer on behalf of a hospital or decline a transfer request when the hospital does not provide the services needed or lacks capacity. Otherwise, a PLC may make no independent decision to accept or refuse a transfer request on behalf of a facility.

At the ED Physician's request, the PLC must facilitate a discussion between the ED Physician and the on-call physician of the receiving facility. The on-call physician does not have the authority to refuse an appropriate transfer on behalf of the facility.

The PLC may, at the transferring ED Physician's request, provide information about receiving facilities with capability and capacity for accepting the individual in need of transfer. The ED Physician and the individual to be transferred then make the decision on the receiving facility.

The PLC may, at the request of the transferring facility, provide information on the availability of EMS or transport options for transfer of an individual. However, the transferring physician retains the responsibility to determine the method and mode of transportation and the personnel and equipment needed. Transfer acceptance cannot be predicated upon the transferring facility using a method of transportation chosen by the receiving facility or a PLC.

6.

**PROCEDURES:**

**1. Transfers of Individuals Who Are Not Medically Stable**

**Requirements Prior to Transfer.** After the hospital has provided medical treatment within its capability to minimize the risks to the health of an individual with an EMC who is not medically stable, the hospital may arrange an appropriate transfer for the individual to another more appropriate or specialized facility. Evaluation and treatment shall be performed and transfer shall be carried out as quickly as possible for an individual with an EMC which has not been stabilized or when stabilization of the individual's vital signs is not possible because the hospital does not have the appropriate equipment or personnel to correct the underlying process. The following requirements must be met for any transfer of an individual with an EMC that has not been stabilized:

- a. Minimize the Risk. Before any transfer may occur, the transferring hospital must first provide, within its capacity and capability, medical treatment to minimize the risks to the health of the individual or unborn child.
- b. Individual's Request or Physician's Order. Any transfer to another medical facility of an individual with an EMC must be initiated either by a written request for transfer from the individual or the legally responsible person acting on the individual's behalf or by a physician order with the appropriate physician or QMP and Physician certification as required under EMTALA. Any written request for a transfer to another medical facility from an individual with an EMC or the legally responsible person acting on the individual's behalf shall indicate the reasons for the request and that he or she is aware of the risks and benefits of the transfer.
- c. Request To Transfer Made to Receiving Facility. The transferring hospital must call the receiving hospital or the PLC to verify the receiving hospital has available space and qualified personnel for the treatment of the individual. The receiving hospital must agree to accept the transfer and provide appropriate treatment. The transferring hospital must obtain permission from the receiving hospital to transfer an individual. This may be facilitated by the PLC. Such permission should be documented on the medical record by the transferring hospital, including the date and time of the request and the name and title of the person accepting transfer. The transferring physician shall ensure that a receiving hospital has appropriate services and has accepted responsibility for the individual being transferred.
- d. Document the Request. The transferring hospital must document its communication with the receiving hospital, including the request date and time and the name of the person accepting the transfer.
- e. Send Medical Records. The transferring hospital must send to the receiving hospital copies of all medical records available at the time of transfer related to the EMC and continuing care of the individual. The transferring hospital may provide the Face Sheet with the appropriate information to the PLC to assist in facilitating the transfer. But, the PLC generally may not provide any information to, or respond to questions from, to the receiving facility or physician at the receiving facility, regarding whether or not the patient

has insurance, or the type of insurance, or other information regarding the patient's ability to pay for services prior to acceptance of the patient except as required by a state or local plan for providing care to certain patient populations where insurance coverage is a determining factor in where the patient may receive care. Documentation sent to the receiving hospital must include:

- Copies of the available history, all records related to the individual's EMC, observations of signs or symptoms, patient's condition at the time of transfer, preliminary diagnosis, results of diagnostic studies or telephone reports of the studies, treatment provided, results of any tests, monitoring and assessment data, any other pertinent information, and the informed written consent for transfer of the individual or the certification of a physician or QMP.
- The name and address of any on-call practitioner who refused or failed to appear within a reasonable time to provide necessary stabilizing treatment; and
- The individual's vital signs which should be taken immediately prior to transfer and documented on the Memorandum of Transfer Form.
- Copies of available records must accompany the individual; and
- Copies of other records not available at the time of transfer must be sent to the receiving hospital as soon as practical after the transfer.

Medical and other records related to individuals transferred to or from the hospital must be retained in their original or legally reproduced form in hard copy, microfilm, or electronic media for a period of five years from the date of transfer.

- f. Physician Certification of Risks and Benefits. A physician must sign an express written certification that, based on the information available at the time of transfer, 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 unborn child, from being transferred. The certification should meet the following requirements:
- The certification must state the reason for transfer. The narrative rationale need not be a lengthy discussion of the individual's medical condition as this can be found in the medical record but should be specific to the condition of the patient upon transfer.
  - The certification must contain a complete picture of the benefits to be expected from appropriate care at the receiving facility and the risks associated with the transfer, including the time away from an acute care setting necessary to effect the transfer.
  - The date and time of the physician certification should closely match the date and time of the transfer.
  - Certifications may not be backdated.
- g. QMP Certification. If a physician is not physically present at the time of the transfer, a QMP may sign the certification, after consultation with a physician, and transfer the individual as long as the medical benefits expected from transfer outweigh the risks. If a QMP signs the certification, a physician shall countersign it within 24 hours or a reasonable time period specified by the hospital bylaws, rules or regulations.
- h. Send Memorandum of Transfer. A Memorandum of Transfer must be completed for every patient who is transferred to another separately licensed hospital. The Memorandum of Transfer and the patient's medical record must be sent with the patient

at the time of transfer. A copy of the Memorandum of Transfer shall be retained by the transferring hospital and incorporated into the patient's medical record.

## 2. **Transfers that are requested by the individual but not medically indicated**

If a medically unstable individual, or the legally responsible person, requests a transfer to another hospital that is not medically indicated, the individual or the legally responsible person must first be fully informed of the risks of the transfer; the alternatives (if any) to the transfer; and the hospital's obligations to provide further examination and treatment sufficient to stabilize the individual's EMC.

Components of the Individual's Request for Transfer. The transfer is appropriate only when the request meets all of the following requirements:

- is in writing and indicates the reasons for the request;
- contains a statement of the hospital's obligations under EMTALA and the benefits and risks that were outlined to the person signing the request;
- indicates that the individual is aware of the risks and benefits of the transfer;
- is made part of the individual's medical record, and a copy of the request should be sent to the receiving facility when the individual is transferred; and
- is not made through coercion or by misrepresenting the hospital's obligations to provide an MSE and treatment for an EMC or labor.

Note: Once the transfer is accepted, the Memorandum of Transfer and the patient's medical record must be sent with the patient.

## 3. **Refusal to Consent to Transfer**

If an individual, or the legally responsible person acting on the individual's behalf, refuses to consent to the hospital's offer to transfer the individual to another facility for services the hospital does not provide and informs the individual, or the legally responsible person, of the risks and benefits to the individual of the transfer, all reasonable steps must be taken to secure a written refusal from the individual or the person acting on the individual's behalf. The individual's medical record must contain a description of the proposed transfer that was refused by the individual or the person acting on the patient's behalf, a statement that the individual was informed of the risks and benefits and the reason for the individual's refusal to consent to the transfer.

## 4. **Transfer of Individuals Who Are Medically Stable**

EMTALA does not apply to an individual who has been medically stabilized. The hospital has no further EMTALA obligation to an individual who has been determined not to have an EMC or whose EMC has been stabilized or who has been admitted as an inpatient.

- a. Any individual who has been medically stabilized may be transferred upon request or pursuant to a physician's order via a pre-arranged transfer or treatment plan according to hospital policy.
- b. **Document Stable Condition**. The stability of the individual is determined by the ED physician or QMP in consultation with the physician. After it is determined that the



individual is medically stable, the physician or QMP must accurately and thoroughly document the parameters of such stability.

- i. A woman who is in labor is considered to be stabilized only after she has been delivered of the child and the placenta.
- ii. An individual presenting with psychiatric symptoms is considered to be stabilized when he/she is protected and prevented from harming self or others.
- iii. If there is a disagreement between the treating physician and an off-site physician (e.g., a physician at the receiving facility or the individual's primary care physician if not physically present at the first facility) about whether the individual is stable for transfer, the medical judgment of the physician who is treating the individual at the transferring facility DED takes precedence over that of the off-site physician.

## 5. Recipient Hospital Responsibilities

- a. A participating hospital that has specialized capabilities or facilities (including, but not limited to burn units, shock-trauma units, neonatal intensive care units, dedicated behavioral health units, or regional referral centers in rural areas) may not refuse to accept an appropriate transfer from a transferring hospital within the boundaries of the United States, of an individual who requires such specialized capabilities or facilities if the receiving hospital has the capacity to treat the individual.
- b. The requirement to accept an appropriate EMTALA transfer applies to any Medicare-participating hospital with specialized capabilities, regardless of whether the hospital has a DED.
- c. The recipient hospital's EMTALA obligations do not extend to individuals who are inpatients at another hospital.
- d. If an individual arrives through the DED as a transfer from another hospital or health care facility, the hospital has a duty to have a physician or QMP, not a triage nurse, perform an appropriate MSE to determine whether the patient's condition deteriorated during the transport. The MSE must be documented in the medical record.
- e. A recipient hospital with specialized capabilities that delays the treatment of an individual with an EMC who arrives as a transfer from another facility could be in violation of EMTALA, depending on the circumstances of the delay.
- f. An individual on an EMS stretcher in the DED must be provided an MSE without delay. EMTALA regulations apply as soon as the individual arrives on the facility's campus even if the EMS service has not formally turned the individual over to the DED care providers.
- g. The receiving hospital may handle the receipt and subsequent assessment of the transferred emergency patient in a number of ways, including:
  - i. For example, the transferring facility may contact the individual or department designated by the CEO as the coordinator for transfers such as the House Supervisor or the PLC. After the receiving hospital's designated transfer coordinator

is contacted, this individual or PLC will then coordinate any transfer requests with the Administrator On-Call and the ED Physician as necessary. Once it has been determined that the receiving facility has agreed to accept the patient, the patient may be transferred directly to a designated specialty unit such as a SICU, PICU, Cardiac Catheterization Lab, Burn Center, or other Specialty Unit if there is capacity and a physician with the appropriate specialty credentials is available to assess the patient within a reasonable timeframe (generally, within 30 minutes). Upon acceptance into the specialty unit as an inpatient, the Conditions of Participation govern the patient's care, including the history and physical and establishment of a plan of care.

- ii. If the receiving facility participates in a community wide cardiac or stroke alert system inclusive of pre-hospital patient management by EMS Services under the direction of a qualified physician that allows for diagnosis of an emergent medical condition prior to arrival at the receiving facility, the EMS service may take the patient directly to the Interventional Radiology Suite or the Cardiac Catheterization Lab if the stroke or cardiac alert team, including the appropriately credentialed physician, is present upon arrival of the patient. The awaiting physician in the Unit would perform the additional evaluation and treatment and document such findings in the medical record. The Interventional Radiology Suite or Cardiac Cath Lab would be responsible for ensuring the registration as an emergency patient thus ensuring the patient appears on the Central/EMTALA log.
- iii. If a facility's transfer coordinator receives a request from a transferring hospital and no specialty bed is available but the DED has capacity and capability to further treat and stabilize the individual and an on-call physician is available, the receiving facility should accept the transfer as an ED to ED transfer. If the Emergency Department of the receiving hospital has exceeded its capacity and capability with individuals waiting to be seen and patients being held on stretchers in the hallways because no beds are available, then the receiving ED can refuse the transfer based upon no capacity and capability if that has been their practice in the past based on the same capacity.
- iv. Each specialty unit shall be responsible for entering the transferred patient's name and pertinent data into the appropriate log as per hospital policy.

## **6. Review Process for Any Refused Transfers**

For those situations in which the hospital refuses to accept a transfer from another facility, the hospital and PLC must have in place a procedure to review potential refusals and/or to monitor any refusals of transfer from other facilities. The PLC shall establish a process to notify a hospital of a potential EMTALA violation.

## **7. Reporting Potential EMTALA Violations**

Any employee working with the DED, including but not limited to, a medical staff member, house staff member, hospital employee, or contracted individual who works in the DED or other area where EMTALA requirements are applicable and who has reason to believe that a potential violation of the law has resulted in an inappropriate transfer to the hospital as a receiving hospital or from the hospital as a transferring hospital must report the incident to

the CEO or CEO's designee such as the Risk Manager or the ECO immediately for investigation.

- a. **Receiving Hospitals.** Receiving hospitals have a duty to report any inappropriate transfer received from a transferring institution. A hospital that suspects it may have received an improperly transferred individual (transfer of an unstable individual with an EMC who was not provided an appropriate transfer according to 42 C.F.R. § 489.24(e)(2)), is required to promptly report the incident to the Centers for Medicare & Medicaid Services (CMS) or the state agency within 72 hours of the occurrence. Failure to report within 72 hours may result in an EMTALA violation by the receiving facility.
- b. **Transferring Hospitals.** A participating hospital may not penalize or take adverse action against a physician or a QMP because the physician or QMP refuses to authorize the transfer of an individual with an EMC that has not been stabilized, or against any hospital employee because the employee reports a violation of a requirement of the EMTALA obligations.

## 8. Declared Emergencies

Sanctions under EMTALA for an inappropriate transfer during a national emergency do not apply to a hospital with a DED located in an area that has been declared a national emergency area. Please review the requirements for transfers during a National Emergency contained in the EMTALA – Definitions and General Requirements Policy, LL.EM.001, and consult with the hospital's Disaster and Emergency Preparedness Plan as well as Operations Counsel for additional guidance.

- a. **Waiver of Sanctions.** Sanctions under EMTALA for an inappropriate transfer or for directing or relocating an individual who comes to the DED to an alternative off-campus site for the MSE during a national emergency do not apply to a hospital with a DED located in an emergency area if the following conditions are met:
  - i. the transfer is necessitated by the circumstances of the declared emergency in the emergency area during the emergency period;
  - ii. the direction or relocation of an individual to receive medical screening at an alternate location is pursuant to an appropriate State emergency preparedness plan or, in the case of a public health emergency (PHE) that involves a pandemic infectious disease, pursuant to a State pandemic preparedness plan;
  - iii. the hospital does not discriminate on the basis of an individual's source of payment or ability to pay;
  - iv. the hospital is located in an emergency area during an emergency period; and
  - v. there has been a determination that a waiver of sanctions is necessary.
- b. **Waiver Limitations.**
  - i. An EMTALA waiver can be issued for a hospital only if:
    - the President has declared an emergency or disaster under the Stafford Act or the National Emergencies Act;
    - the Secretary of HHS has declared a PHE; and
    - the Secretary of HHS invokes his or her waiver authority including notifying Congress at least 48 hours in advance.

- ii. In the absence of CMS notification of area-wide applications of the waiver, the hospital must contact CMS and request that the waiver provisions be applicable to the hospital.
- iii. In addition, in order for an EMTALA waiver to apply to the hospital and for sanctions not to apply: (i) the hospital must activate its disaster protocol; and (ii) the State must have activated an emergency preparedness plan or pandemic preparedness plan in the emergency area, and any redirection of individuals for an MSE must be consistent with such plan.
- iv. Even when a waiver is in effect, there is still the expectation that everyone who comes to the DED will receive an appropriate MSE, if not in the DED, then at the alternate care site to which they are redirected or relocated.
- v. A waiver of these sanctions is limited to a 72-hour period beginning upon the implementation of a hospital disaster protocol, except that if a PHE involves a pandemic infectious disease, the waiver will continue in effect until the termination of the application decision of a PHE or a limitation by CMS. However, the waiver may be limited to a date prior to the termination of the PHE declaration, as determined by CMS. If a State emergency/pandemic preparedness plan is deactivated in the area where the hospital is located prior to the termination of the PHE, the hospital no longer meets the conditions for an EMTALA waiver and the hospital waiver would cease to be in effect as of the deactivation date. Likewise, if the hospital deactivates its disaster protocol prior to the termination of the PHE, the hospital no longer meets the conditions for an EMTALA waiver and the hospital waiver would cease to be in effect as of the deactivation date.
- vi. All other EMTALA-related requirements continue to apply, as do similar State law requirements, even when a hospital is operating under an EMTALA waiver. For example, a hospital's obligation to accept an appropriate transfer of an individual under EMTALA cannot be waived if the hospital has the capabilities and capacity to accept such transfer (as discussed in this Policy).

SAMPLE PHYSICIAN

**Emergency Medical Condition (EMC) Identified:** (Mark appropriate box; have physician certify if I.c or I.d selected and then go to Section II.)

**I. MEDICAL CONDITION:**

**Diagnosis:** \_\_\_\_\_

a.  **No Emergency Medical Condition Identified:** This patient has been examined and an EMC has not been identified.

**Screening Physician Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
/ / Time: \_\_\_\_\_ AM/PM

b.  **Unstable Patient, Request for Transfer:** The patient has been examined and an EMC has been identified and the patient is not stable. The hospital has the capability and capacity to provide the care needed but the patient has specifically requested to be transferred to another facility after being notified that the hospital can and is willing to provide the care needed to stabilize and treat the EMC.

c.  **Patient Stable For Transfer:** The patient has been examined and any medical condition stabilized such that, within reasonable clinical confidence, no material deterioration of this patient's condition is likely to result from or occur during transfer.

d.  **Patient Unstable:** The patient has been examined, an EMC has been identified and patient is not stable, but the transfer is medically indicated and in the best interest of the patient.

**I.c and I.d Physician Certification:** *I have examined this patient and based upon the reasonable risks and benefits described below and upon the information available to me, I certify that the medical benefits reasonably expected from the provision of appropriate medical treatment at another facility outweigh the increased risk to this patient's medical condition that may result from effecting this transfer.*

**Physician Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
/ / Time: \_\_\_\_\_ AM/PM

**Signature applies to any checked boxes.**

**II. REASON FOR TRANSFER:**

- Medically Indicated     Patient Requested (see patient request documentation: Section VII)  
 On-call physician refused or failed to respond within a reasonable period of time

On-Call Physician Name: \_\_\_\_\_ Address \_\_\_\_\_

**III. RISKS AND BENEFITS FOR TRANSFER:**

<p><b>Medical Benefits:</b></p> <p><input type="checkbox"/> Obtain level of care/ service unavailable at this facility. Service: _____</p> <p><input type="checkbox"/> Medical Benefits outweigh the risks.</p> <p><input type="checkbox"/> Other _____</p>	<p><b>Medical Risks :</b></p> <p><input type="checkbox"/> Deterioration of condition in route</p> <p><input type="checkbox"/> Worsening of condition or death if you stay here.</p> <p><input type="checkbox"/> Risk of traffic delay/accident resulting in condition deterioration or death.</p> <p><input type="checkbox"/> Other _____</p>
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**IV. MODE/SUPPORT DURING TRANSFER AS DETERMINED BY PHYSICIAN:**

**Mode of transportation for transfer:**  BLS  ALS  Helicopter  Neonatal Unit   
Other \_\_\_\_\_

Agency: \_\_\_\_\_ Name/Title of accompanying hospital employee if required: \_\_\_\_\_

**Support/Treatment during transfer:**  Cardiac Monitor  Oxygen: \_\_\_\_\_  IV Pump

IV Fluid: \_\_\_\_\_ Rate: \_\_\_\_\_  Restraints – Type: \_\_\_\_\_  Other: \_\_\_\_\_  
\_\_\_\_\_  None

PATIENT LABEL

Transferring Physician Signature if different from Certifying Physician: \_\_\_\_\_

Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_ AM/PM

If no physician immediately available, transfer authorized by Qualified Medical Provider per Dr.

QMP Signature \_\_\_\_\_

Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_ AM/PM

Authorizing Physician Signature \_\_\_\_\_

Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_ AM/PM

NURSING

v. **RECEIVING FACILITY AND INDIVIDUAL:** The receiving facility has the capability for the treatment of this patient (including adequate equipment and medical personnel) and has agreed to accept the transfer and provide appropriate medical treatment.

Receiving Facility: \_\_\_\_\_ Person accepting TXFR: \_\_\_\_\_

Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_ AM/PM

Receiving MD \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

Time: \_\_\_ AM/PM

Questions regarding Medication Reconciliation Information may be directed to \_\_\_\_\_ or Transferring Physician.

vi. **ACCOMPANYING DOCUMENTATION** sent via:  Patient/Responsible Party  Fax  Transporter

Documentation includes:  Copy of Medical Record  Lab/ EKG/ X-Ray  Copy of Transfer Form  Medication Reconciliation Information  Advanced Directive  Other

Report given to: (Person/title): \_\_\_\_\_

Time of Transfer: \_\_\_\_\_ Date: \_\_\_\_\_ Nurse Signature: \_\_\_\_\_

Transferring Unit: \_\_\_\_\_

Vital Signs Just Prior to Transfer: Temp: \_\_\_\_\_ Pulse \_\_\_\_\_ R \_\_\_\_\_ BP \_\_\_\_\_

spO2% \_\_\_\_\_ FHT \_\_\_\_\_ Time: \_\_\_ AM/PM

SAMPLE

PATIENT

vii. **PATIENT CONSENT TO MEDICALLY INDICATED TRANSFER or PATIENT REQUEST FOR TRANSFER (Mark appropriate box a. or b.):**

a.  I hereby **CONSENT TO TRANSFER** to another facility. I understand that it is the opinion of the physician responsible for my care that the benefits of transfer outweigh the risks of transfer. I have been informed of the risks and benefits of this transfer.

b.  I hereby **REQUEST TRANSFER** to \_\_\_\_\_. I understand and have considered the hospital's EMTALA responsibilities that have been explained to me, the medical risks and benefits of transfer and the physician's recommendation. I make this request upon my own suggestion and not that of the hospital, physician or anyone associated with the hospital. I agree to accept the risks associated with my decision.

The reason I request transfer is: \_\_\_\_\_

Signature of:  Patient  Responsible Person \_\_\_\_\_ Relationship to patient \_\_\_\_\_

Witness \_\_\_\_\_ Title \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

Time: \_\_\_ AM/PM