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The following is intended to be an educational tool to provide guidance on a hospital's obligations under the Emergency Medical Treatment and Active Labor Act ("EMTALA") to accept the transfer of patients from other hospitals. Specific questions with respect to transfers into a certain hospital (hereinafter referred to as "the Hospital") may raise additional concerns. For that reason, the Hospital attorneys should be contacted with individual questions regarding the Hospital's responsibilities under EMTALA to accept a particular transfer. This document does not address other responsibilities under EMTALA outside of the transfer-in context, nor does it address any specific state law requirements or additional legal obligations that may exist with respect to non-emergency transfers.

QUESTION 1. When must the Hospital accept the transfer of patients without regard to the Hospital's financial admission criteria?

ANSWER 1. The Hospital is obligated under EMTALA to accept an appropriate transfer of a patient with an emergency medical condition from a transferring hospital if the patient requires specialized capabilities of the Hospital and the Hospital has the capacity to treat the patient. The Hospital must accept such transfers without regard to any financial admission criteria.

QUESTION 2. What is an "emergency medical condition"?

ANSWER 2. EMTALA defines "emergency medical condition" as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) 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. The following additional criteria apply to a pregnant woman who is having contractions: (1) there is inadequate time to effect a safe transfer to another hospital before delivery or the transfer may pose a threat to the health or safety of the woman or the unborn child.

QUESTION 3. What is a "specialized capability"?

ANSWER 3. Although there is no clear definition of "specialized capabilities," the statute provides some guidance by giving examples of specialized capabilities such as burn units, shock-trauma units, neonatal intensive care units and regional referral centers. Additionally, the government has taken the position that a

hospital is required to accept the transfer of any patient in an emergency medical condition if it can provide a service that the transferring hospital cannot and has the capacity.

QUESTION 4. How is "capacity" defined?

ANSWER 4. Capacity is defined under the EMTALA regulations as the hospital's ability to accommodate the patient including the availability of qualified staff, beds and equipment as well as the hospital's past practices in accepting additional patients in excess of occupancy limits. For example, if the Hospital has generally accommodated patients by moving patients to other units, calling in additional staff, or borrowing equipment from other facilities, then the Hospital has the obligation under EMTALA to make the same accommodations for the transfer patients with emergency medical conditions requiring specialized capabilities of the Hospital.

QUESTION 5. What are the technical duties of the transferring hospital for an "appropriate transfer"?

ANSWER 5. An appropriate transfer is a transfer in which the transferring hospital provides medical treatment within its capacity which minimizes risks to the patient's health and, in the case of a woman in labor, the health of the unborn child. Additionally, the transferring hospital must send to the receiving hospital copies of all relevant medical records available at the time of the transfer, including records related to the patient's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) and 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. The transferring hospital must effectuate an appropriate transfer through qualified personnel and transportation equipment, including the use of necessary and medically appropriate life support measures during the transfer. The receiving hospital must have available space and qualified personnel and must have agreed to accept the transfer and to provide appropriate medical treatment.

QUESTION 6. Does EMTALA apply to urgent or elective transfers?

ANSWER 6. EMTALA only imposes obligations on hospitals regarding patients with emergency medical conditions. Therefore, urgent and elective transfers of patients are not subject to EMTALA's requirements if a patient's condition is determined to fall outside of the definition of emergency medical condition.

QUESTION 7. May the Hospital physician question or refuse to accept the transferring physician's judgement that a patient has an emergency medical condition requiring the Hospital's specialized capabilities?

ANSWER 7. The Hospital physician may appropriately question the transferring physician's judgement by asking certain question but ultimately, the Hospital may not refuse to accept an appropriate transfer if the transferring hospital has determined that the patient has an emergency medical condition and requires the Hospital's specialized capabilities. The Hospital physician may ask questions such as:

- On what basis was it determined that the patient has an emergency medical condition?
- Does the patient have acute symptoms of such severity that without immediate treatment the patient's life or health will be seriously jeopardized, or bodily functions or parts seriously impaired or dysfunctional?
- Has x, y or z been considered or ruled out as an alternative diagnosis?
- On what basis was it determined that the patient needs specialized capabilities?
- Were x, y, or z alternative treatments or procedures considered?

Additionally, if appropriate, the Hospital physician may educate the transferring hospital that the Hospital has a mandatory reporting obligation to inform the State Department of Health Services and HCFA or the regional office any time the Hospital has reason to believe that it received a patient in an unstable emergency medical condition transferred to the Hospital in violation of EMTALA. (See Question and Answer 15 below).

QUESTION 8. If a hospital a long distance away seeks to transfer a patient to the Hospital because of the Hospital's specialized capabilities but there are other hospitals nearer to the transferring hospital with those capabilities, does the Hospital have to accept the transfer?

ANSWER 8. The Hospital physician may properly question whether the transferring hospital has tried to contract closer hospitals that have the needed specialized capability, but ultimately, the Hospital should not refuse to accept an appropriate transfer if the patient has an emergency medical condition and requires the Hospital's specialized capabilities. The Hospital may ask the transferring hospital whether they have contacted closer hospitals with specialized capabilities, may offer the names and distances of such hospitals and may point out that patient care may be improved by transferring the patient a shorter distance to a closer hospital. The Hospital may, however, violate EMTALA if it refuses to accept an otherwise appropriate transfer even if a closer hospital with specialized capabilities has the capacity to treat the patient.

QUESTION 9. Must the Hospital accept the transfer of a patient requiring a special unit of the Hospital's (such as the shock trauma unit) if such unit is full?

ANSWER 9. If the Hospital has previously accepted additional patients in excess of occupancy limits by triaging some patients to other units, or by calling in additional staff to accommodate its own patients in need of the specialized capabilities of the shock trauma unit, then the Hospital must do the same for the appropriate transfer patients needing such specialized capabilities.

QUESTION 10. Must the Hospital accept the transfer of a patient requiring the emergency services of a specialist if the specialist is not available to handle an emergency case?

ANSWER 10. the Hospital does not have to accept the transfer of a patient requiring the emergency services of a specialist who is unavailable.

QUESTION 11. How is "unavailable" defined?

ANSWER 11. EMTALA does not clearly define "unavailable." The government has taken the position that a specialist may only be legitimately unavailable if he or she is currently providing services to another patient. For example, if a potential transfer patient requires emergency neurosurgery, and the receiving hospital's on-call neurosurgeon is unavailable because he or she is in surgery, the receiving hospital does not have the capacity to accept the transfer.

QUESTION 12. Can a woman in labor be transferred to the Hospital without violating EMTALA?

ANSWER 12. Yes. Under EMTALA, a pregnant woman who is having contractions is not considered to have an emergency medical condition unless there is inadequate time to effect a safe transfer to another hospital before delivery or the transfer may pose a threat to the health or safety of the woman or the unborn child. Accordingly, EMTALA's transfer obligations are not applicable to a pregnant woman having contractions if there is adequate time to effect a safe transfer to the Hospital before delivery and the transfer does not pose a threat to the health of the woman or the unborn child. However, as the leading court case indicated, "[a] hospital that transfers a woman in labor when the timing call…[under EMTALA] is close risks a battle of experts regarding anticipated delivery time, distance, and safe transport speed." *Burditt v. U.S. Department of Health and Human Services*, 934 F.2d 1362, 1369 (5th Cir. 1991). Accordingly, the general assumption is that under most circumstances, a pregnant woman who is having contractions should be considered to have an emergency medical condition.

If a woman in labor does have an emergency medical condition, she must be stabilized (the hospital must deliver the baby including the placenta) or transferred. Thus, a woman in active labor who has an emergency medical

condition may only be transferred to the Hospital if (1) the woman, after being informed of the transferring facility's obligations and the risks of transfer, requests the transfer in writing, or (2) a physician at the transferring facility has signed a certification that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of care at the Hospital outweigh the increased risks to the patient and her unborn child from effecting the transfer. If the transferring facility does not provide obstetrical services, or is not capable of handling high-risk deliveries or high-risk neonates, the benefits of a transfer may outweigh the risks. Careful consideration should be given to these cases. As with any EMTALA transfer, the technical obligations for appropriate transfers apply. (See Question and Answer 5).

QUESTION 13. Do EMTALA's obligations to accept certain transfers apply to inpatients of the transferring hospital?

ANSWER 13. The answer depends on what part of the country a hospital is located in. Courts in Massachusetts and other states have held that once a patient in the emergency room is determined to have an emergency medical condition, EMTALA's discharge and transfer requirements apply regardless of whether the patient remains in the emergency room or is admitted to a unit. In California and several other states, the court's have held that EMTALA's requirements do not apply unless the patient arrived at the hospital's emergency department with an emergency medical condition, seeking treatment, and the subsequent transfer is from the emergency department. Although the Supreme Court of the United States had an opportunity in the 1999 Roberts v. Galen of Virginia case to resolve this interpretation dispute, it did not reach the issue. At that time the Secretary of Health and Human Services indicated that new regulations would be issued addressing whether EMTALA's obligations extend beyond the emergency room. Despite the fact that there is still a lot of discussion about new "inpatient regulations" such guidance has not been forthcoming. Because of the disparity between jurisdictions and the expectation of changes in the law on this issue, the Hospital attorney's should be consulted.

QUESTION 14. What are the potential consequences of refusing to accept an appropriate transfer in violation of EMTALA (so-called "reverse dumping")?

ANSWER 14. Both HCFA and the OIG have enforcement authority under EMTALA including the ability to impose civil monetary penalties (CMPs) on hospitals and/or physicians of $25,000 to $50,000 per violation. There are several reported CMP settlements involving reverse dumping including a $40,000 settlement by a large California hospital that refused to accept an appropriate transfer of a patient requiring the specialized capabilities of the hospital. Under some state laws, the Department of Health also has authority to impose CMPs on hospitals. Additionally, EMTALA and some state laws both

provide for a private cause of action that enables patients to sue for damages caused by a hospital's failure to follow the applicable requirements.

QUESTION 15. What can the Hospital do if it believes that the transferring hospital has "dumped" a patient?

ANSWER 15. Under the EMTALA regulations, the Hospital has an obligation to report to HCFA or the state survey agency any time that it has reason to believe that it may have received a patient who has been transferred in an unstable emergency medical condition from another hospital in violation of EMTALA's transfer requirements. Failure to report could, in the most extreme circumstances, subject the Hospital to termination of its provider agreement. The comments in the EMTALA regulations state that the receiving hospital must make such reports within seventy-two hours although there is no indication that this standard is currently being enforced. Under state law, the Hospital may also have an obligation to report any known apparent violations to the state Department of Health. The Hospital should take the time to investigate potential violations to determine if the transfer was inappropriate. A reasonable approach may be to call the transferring hospital for additional information. This may serve as a method to help identify whether a violation occurred and educate the transferring facility as well as a deterrent to future inappropriate transfers.

QUESTION 16. What is an inappropriate transfer?

ANSWER 16. Inappropriate transfers include: (1) transferring a patient with an unstable emergency medical condition without obtaining the acceptance of the receiving hospital unless the receiving hospital is obligated under EMTALA to accept the transfer; (2) transferring a patient in an unstable emergency medical condition to receive stabilizing treatment at the receiving hospital because an on-call physician in the transferring hospital refused, or failed to show up within a reasonable period of time to provide stabilizing treatment; (3) transferring a patient in an unstable emergency medical condition without using available equipment or transportation to limit the deterioration during the transfer; and (4) transferring a patient with an unstable emergency medical condition that has not been stabilized when the transferring hospital has the capability and capacity to provide the stabilizing treatment. Inappropriate transfers may also include the failure of a transferring hospital to comply with the other specific criteria for appropriate transfers. (See Question and Answer 5 above).