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| <b>Title:</b>                     | <b>EMTALA – Patient Transfers and Emergency Medical Treatment and Active Labor Act</b> |                                     |  |
| <b>Department:</b>                | Emergency Department   |                                     |  |
| <b>Policy #:</b>                  | ED-129   | <b>Impacted Departments:</b>        |  |
| <b>Effective Date:</b>            | 6/14/2014  |                                     |  |
| <b>Revision Date(s):</b>          | 5/12/17  |                                     |  |
| <b>Joint Commission Standard:</b> |  | <b>Conditions of Participation:</b> |  |
| <b>Review date(s):</b>            | 8/24/16, 12/16/2018  |                                     |  |

## I. PURPOSE

- a. To comply with federal "anti-dumping" regulations regarding the prohibition against refusing to treat patients in emergency situations.

## II. POLICY

- a. To ensure that all patients coming to the Hospital requesting emergency services receive an appropriate medical screening examination within Hospital's capability to determine whether or not an emergency medical condition exists. If a patient is determined to have an emergency medical condition, then Hospital will either stabilize and/or transfer the patient in accordance with the Emergency Medical Treatment and Active Labor Act (EMTALA).

## III. DEFINITIONS

- a. AMA: Means "against medical advice" and refers to patients who have started treatment and voluntarily leave the Hospital against medical advice.
- b. Campus: Means the physical area immediately adjacent to the main Hospital and any other areas determined on a case-by-case basis, by the CMS (formerly HCFA) regional office, to be part of the main Hospital's campus.
- c. Capability: Means the resources of the Hospital including the physical space, equipment, supplies and services (*e.g.*, trauma care, surgery, intensive care, pediatrics, obstetrics, neonatal unit or psychiatry) and ancillary services. The capabilities of the Hospital's staff mean the level of care that the Hospital's personnel can provide within the training and scope of their professional licenses.

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- d. Capacity: Means that the organization has available space, qualified staff, beds, equipment and resources to accommodate the individual requesting examination or treatment.

Comes to the Emergency Department: Means the individual (not yet a patient):

- e. Presents at the Hospital's Emergency Department or on Hospital Property and examination or treatment for a medical condition is requested or it can reasonably be inferred that the individual needs examination or treatment for a medical condition; or
- f. Is in an ambulance on Hospital Property for presentation for examination and treatment for a medical condition at Hospital's Emergency Department. (If the ambulance has not come on Hospital Property, but has contacted the Hospital to request that the Hospital treat the individual, but the Hospital has no Capacity, this is NOT considered to be an individual that comes to the Emergency Department.)
- g. Is in an ambulance (ground or air) owned and operated by the Hospital, regardless of whether it is on Hospital Property, unless either:
1. the ambulance is operating under community-wide EMS protocols that require it to transport the patient to a hospital other than Hospital, or
  2. the ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the Hospital.
  3. Emergency Department: Means Hospital's Emergency Department, Emergency that Requires a Medical Screening: Means a condition that a layperson requesting treatment understands to mean emergency treatment.
  4. Emergency Medical Condition: Means:
    - h. 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 patient (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

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- i. With respect to a pregnant woman who is having contractions:
  1. That there is inadequate time to effect a safe Transfer to another hospital before delivery; or
    - a. That Transfer may pose a threat to the health or safety of the woman or the unborn child.
- j. Hospital: Means any facility that operates under the Hospital's unique Medicare provider number.
- k. Hospital Property: Means the entire Hospital campus, including the parking lot, sidewalk, driveway, as well as any facility or organization that is located off the Hospital but has been determined to be a department of the Hospital and/or operates under the Hospital Medicare Provider Number. Hospital Property does NOT include other areas or structures of the Hospital's main building but are not part of the Hospital, such as physician offices, rural health clinics, skilled nursing facilities, or other entities that participate separately under Medicare, or non-medical facilities.
- l. LBT: Means "left before treatment" and refers to patients who voluntarily leave the Hospital before the Medical Screening Exam (defined below) and treatment plan has been initiated.
- m. Labor: Means the process of childbirth beginning with the latent or early phase of labor and continuing through the delivery of the placenta. A woman experiencing contractions is in true labor unless a physician certifies that, after a reasonable time of observation, the woman is in false labor.
- n. LIP: Means "Licensed Independent Practitioner" or personnel and refers to a patient who is licensed or certified in one of the designated professional categories, and who has demonstrated current competence and may perform the MSE. A LIP, acting within his/her scope of responsibility and practice as provided for by Louisiana law, may perform a MSE in consultation or collaboration with or under the direction of the individual's attending physician or an appropriate Hospital physician.
- o. A LIP, as outlined above, may be someone licensed in one of the following designated professional categories:
  - Physician
  - Physician Assistant

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□ Advanced Nurse Practitioner

- p. MSE: Means "medical screening examination" and refers to the process required to reach with reasonable clinical confidence, the point at which it can be determined whether or not an Emergency Medical Condition exists or a woman is in Labor. Such screening must be done within the facility's capability and available personnel, including on-call physicians. The medical screening examination is an ongoing process and the medical records must reflect continued monitoring based on the patient's needs and must continue until the patient is either Stabilized or appropriately transferred.
- q. To Stabilize or Stabilized: With respect to an Emergency Medical Condition, means to provide such medical treatment of the condition necessary to assure that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the Transfer of the patient from the facility or in the case of a woman in Labor, that the woman delivered the child and the placenta. A patient will be deemed Stabilized if the treating physician of the patient with an Emergency Medical Condition has determined, within reasonable medical probability, that the same standard under "to stabilize" has been met. An individual who goes in and out of apparent stability with sufficient rapidity or frequency is not considered Stabilized.
- r. Transfer: Means the movement, including the discharge, of the patient outside the Hospital's facilities at the direction of any person employed by or affiliated with the Hospital. Transfer does NOT include a patient who has been declared deceased or who leaves the Hospital AMA or LBT.

#### IV. PROCEDURE(s)

- a. General Requirements
1. When an individual Comes to the Emergency Department of the Hospital or its Property, the Hospital must provide an appropriate MSE within the capability of the Hospital's Emergency Department, including ancillary services routinely available to the Emergency Department, to determine whether or not an Emergency Medical Condition exists, or with respect to a pregnant woman having contractions, whether or not the woman is in Labor. If an Emergency Medical Condition is determined to exist, the Hospital shall provide any necessary stabilizing treatment or an appropriate transfer.
- b. Medical Screening Examinations
- c. When a Medical Screening Examination is Required

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1. If the patient Comes to the Emergency Department and a request is made for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature (see definition of Emergency Medical Condition), the Hospital is required to perform only an appropriate screening to determine that the patient does not have an Emergency Medical Condition.
- d. If a patient is admitted for elective (non-emergency) diagnosis or treatment, the Hospital has no responsibility to perform a MSE or to otherwise comply with EMTALA regarding the patient, even upon an abrupt deterioration of his or her medical condition after admission.
- e. If a patient comes to the Emergency Department and requests emergency care, he or she must receive a MSE within the Capabilities of the Hospital and as required to stabilize the patient. If the patient has not arrived at the Emergency Department, movement of the patient to the Hospital's Emergency Department may be necessary for screening. However, the LIP should use professional judgment in such case, taking into account the following, which are not necessarily determinative in all situations:
  1. Whether the Hospital Emergency Department has the personnel and resources necessary to render adequate medical treatment to all existing patients in the Emergency Department and to adequately respond to new patient emergencies that could arrive at any moment,
  2. Whether responding to the emergency could send Hospital personnel into harm's way or unreasonably endanger or jeopardize the lives or health of such personnel, and
  3. Whether non-Hospital paramedics, emergency medical technicians, or other qualified personnel are present to respond.
- f. If the patient cannot be Stabilized or given a MSE, the Hospital must provide for Transfer of the patient in accordance with Section E herein.
- g. The Location in Which the Medical Screening Examination Should Be Performed
  1. The MSE and other emergency services need not be provided in a location specifically identified as an emergency room or an Emergency Department. If a patient arrives at the Hospital and is not technically in the Emergency Department, but is on Hospital Property and requests emergency care, he or she is entitled to a MSE. The Hospital may use areas to deliver emergency

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services which are also used for other in-patient or out-patient services. MSE's or stabilization may require ancillary services available only in areas or facilities of the Hospital outside of the Emergency Department.

- h. Patients may be directed to other Hospital-owned facilities which are contiguous (*i.e.*, any area within the Hospital or a Hospital-owned facility on land that touches land where the Hospital Emergency Department sits) or is part of the Hospital's campus and is owned by the Hospital, and is operated under the Hospital's provider number.
- i. How to Provide the Medical Screening Examination
- j. Hospital is obligated to perform the Medical Screening Examination to determine if an Emergency Medical Condition exists. It is not appropriate to merely "log in" a patient and not provide a Medical Screening Examination.
- k. Patients coming to the Emergency Department must be provided a MSE. Triage is not equivalent to a MSE. Triage merely determines the "order" in which patients will be seen, not the presence or absence of an Emergency Medical Condition.
- l. The Hospital must provide screening and stabilizing treatment within the scope of its Capability, as needed, to the patients with Emergency Medical Conditions who come to the Emergency Department for examination and treatment.
- m. A MSE may be performed by an Emergency Department physician, another physician, or by any LIP. Any LIP may consult with the patient's physician regarding the patient's medical history and needs so long as the consultation does not unduly delay screening or Stabilization.
- n. Depending on the patient's presenting symptoms, the MSE may range from a simple process involving only a brief history and physical examination to a complex process that also involves performing ancillary studies and procedures such as (but not limited to) lumbar punctures, clinical laboratory tests, CT scans and other diagnostic tests and procedures.
- o. A MSE is not an isolated event. It is an on-going process. The record must reflect continued monitoring according to the patient's needs and must continue until he/she is Stabilized or appropriately transferred. There should be evidence of this evaluation documented in the medical record prior to discharge or Transfer.

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p. No Delay in Screening or Examination

1. The MSE and/or necessary stabilizing treatment for an Emergency Medical Condition cannot be delayed to inquire about the patient's method of payment, insurance status or prior authorization from a managed care plan or insurance company, and such inquiry should take place only after the MSE has been conducted and the patient has been Stabilized.
2. If the respective managed care plan, insurer or physician denies authorization for the MSE or stabilizing treatment, the MSE and stabilizing treatment, if applicable, shall be performed within the Hospital's Capacity and Capability, regardless of such denial.
3. Neither the performance of the MSE nor the provision of stabilizing treatment shall be conditioned on a patient's completion of a financial responsibility form or payment of a co-payment. Patients will also be told that the Hospital will provide a MSE and stabilizing treatment, regardless of their ability to pay. Patients should be encouraged to provide any health insurance benefit information after the MSE and stabilizing treatments to avoid patients incurring unnecessary financial liability.
4. The registration of a patient who Comes to the Emergency Department shall be conducted so as to not discourage patients from remaining for further evaluation, if necessary.

q. Withdrawal of Request For Refusal of Examination or Treatment

1. If a patient refuses or withdraws his or her request for examination or treatment, an appropriately trained individual from the Emergency Department staff will discuss the medical issues related to a voluntary withdrawal. In the discussion, the Emergency Department staff member will:
2. Offer the patient further medical examination and treatment as may be required to identify and Stabilize an Emergency Medical Condition;
3. Inform the patient of the benefits of the examination and treatment, and of the risks of withdrawal prior to receiving the examination and treatment; and
4. Take all reasonable steps to obtain the patient's signature on a form noting the refusal to consent to examination and treatment. If the patient refuses to sign the form, a description of risks discussed and of the examination and/or treatment that was refused shall be documented on the form and in the

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medical record. (A copy of the Refusal of Examination or Treatment form is attached to this Policy.)

- s. If a patient leaves the Hospital without notifying Hospital personnel, this should be documented. The documentation must reflect that the patient had been at the Hospital and the time the patient was discovered to have left the premises. Triage notes and additional records must be retained.

- t. LIPs who may perform the MSE Include:

Physicians, Physician Assistants and Advanced Nurse Practitioners functioning within the scope of their license who have been credentialed and/or privileged by the Medical Staff of the Hospital to provide a MSE.

- u. Patients Seeking Emergency Care Who Leave AMA/LBT If a patient waiting for a MSE to be completed decides to leave without examination, the following steps should be taken if at all possible:

1. Explain to the patient that it is important to have the MSE to rule out whether or not the patient has a medical condition that needs treatment, as well as other benefits of the MSE.
2. Use an interpreter if the patient has limited English proficiency or a disability affecting communication.
3. Inform the patient of the risks of not having the MSE.
4. Ask the patient to sign the AMA form acknowledging they understand the risks of leaving without the MSE. (A copy of the Refusal of Examination or Treatment is attached to this Policy.)
5. Document on the medical record the above information, as well as a description of the examination and treatment, if applicable, that were refused.
6. If the patient refuses to sign the AMA form, document this also on medical record, if generated, and the central log, as well as complete an AMA form indicating their refusal to sign.
7. Stabilization

- v. A patient will be deemed Stabilized if the treating physician attending to the patient in the Hospital Emergency Department has determined within reasonable



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medical probability that no material deterioration of the condition is likely to result from or occur during the Transfer of the patient from the Hospital.

w. For the patient whose Emergency Medical Condition has not been resolved, the determination of whether he or she is Stabilized may occur in one of the following two circumstances:

1. **Stable For Transfer** – A patient is stable for Transfer from one facility to a second facility if the treating physician has determined within reasonable clinical confidence that the patient is expected to leave the Hospital and be received at the second facility with no material deterioration in his/her medical condition, and the treating physician reasonably believes that the receiving facility has the capability to manage the patient's medical condition and any reasonably foreseeable complication of that condition.
  2. For purposes of transferring a patient with a psychiatric condition from the Hospital to another hospital, the patient is considered to be stable when he/she is protected and prevented from injuring himself/herself or others.
- x. If there is a disagreement between the treating physician and an off-site physician (*e.g.*, a physician at the receiving facility or the patient's primary care physician if not physically present at the first facility) about whether the patient is stable for Transfer, the medical judgment of the treating physician usually takes precedence over that of the off-site physician.
- y. **Stable For Discharge** – A patient is considered stable for discharge when, within reasonable clinical confidence, it is determined that the patient has reached the point where his or her continued care, including diagnostic work-up and/or treatment, could be reasonably performed as an outpatient or later as an inpatient, provided the patient is given a plan for appropriate follow-up care with the discharge instructions. With respect to a patient with a psychiatric condition, the patient is considered to be stable for discharge when the physician has determined that the patient is no longer considered to be a threat to him/herself or to others.
- z. Neither stable for discharge nor stable for Transfer requires the final resolution of the Emergency Medical Condition.
- aa. The Hospital may not admit the patient with an Emergency Medical Condition to any department of the Hospital and then discharge him or her prior to being Stabilized in order to circumvent the requirements of EMTALA.
- bb. If the Hospital admits an unstable patient as an inpatient for stabilizing treatment, Stabilizes the patient's Emergency Medical Condition, and documents in the

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patient's medical record the relevant clinical data, the Hospital has met its EMTALA obligations.

cc. If the patient is otherwise stable for a Transfer, but remains as an inpatient for follow-up care, the Hospital's EMTALA obligations have been met.

dd. If, after Stabilization, the inpatient has an apparent decline of his or her medical condition for whatever reason, the Hospital must comply with all relevant laws, rules and regulations, including the Medicare Conditions of Participation, with regard to the care of the inpatient, but it has no further responsibility with respect to EMTALA.

ee. If an enrollee of a Medicare+ Choice organization is stabilized and needs further hospital care, the Hospital must promptly contact the Medicare+ Choice organization to obtain pre-approval for the further care.

ff. Transfer

#### V. General Requirements of Appropriate Transfer

The four requirements of an appropriate Transfer must be met before a patient can be transferred to a second facility under any circumstances:

- a. The Hospital has, within its Capability, provided treatment to minimize the risks to the health of the patient or unborn child;
- b. The receiving hospital must have available space and qualified personnel for the treatment of the patient, and must have agreed to accept the Transfer and provide appropriate treatment;
- c. The Hospital must send copies of all available medical records pertaining to the patient's Emergency Medical Condition to the receiving hospital.
  1. These documents include copies of the available history, records related to the patient's Emergency Medical Condition, observation 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 written certification of the physician.
  2. Documentation must also include the name and address of any on-call practitioner who refused or failed to appear within a

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reasonable time to provide necessary stabilizing treatment after being requested to do so by the emergency physician.

3. Copies of other records not available at the time of Transfer will be sent as soon as practical after the Transfer.
  4. Copies of records must accompany the patient whether or not the patient's Emergency Medical Condition is Stabilized; and
- d. The Transfer must be carried out through the use of Qualified Medical Personnel and transportation equipment, including those life support measures that may be required during Transfer. The physician at the Hospital has the responsibility of determining the appropriate mode, equipment and attendants for the Transfer.

#### VI. Transfer of Patients in Unstable Condition

- a. The Hospital may not transfer a patient with an Emergency Medical Condition that has not been Stabilized unless:
  1. the physician has certified that the medical benefits to be received at another hospital outweigh the increased risks to the patient (and, as the case may be, to her unborn child); or
  2. the patient, or a legally responsible person acting on the patient's behalf, requests in writing the transfer, after being informed of the Hospital's obligations under EMTALA and of the risks and benefits of the Transfer.
- b. For Transfer with Physician Certification. For a patient who has not been Stabilized, a physician must have signed a 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 patient or, in the case of a woman in Labor, to the unborn child, from being transferred. The certification must contain a summary of the risks and benefits upon which it is based.
  1. An express written certification is required. Physician certification cannot be implied from the findings in the patient medical record and the fact that the patient was transferred.
- c. For Transfer on Patient Request. The patient or the legally responsible person acting on the patient's behalf must first be fully informed of the risks of the Transfer, the alternatives (if any) to the Transfer, and of the Hospital's obligations to provide

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further examination and treatment sufficient to Stabilize the patient's Emergency Medical Condition, and to provide an appropriate Transfer:

1. The request must be in writing and indicate the reasons for the request.
2. The request must indicate that the patient is aware of the risks and benefits of the Transfer.
3. The request must be made part of the patient's medical record, and a copy of the request should be sent to the receiving (recipient) facility when the patient is transferred.
4. The request for Transfer should not be made through coercion or by misrepresenting the Hospital's obligations to provide a Medical Screening Examination and treatment for an Emergency Medical Condition or Labor.

#### VII. Refusal to Consent to Transfer

If the Hospital offers to transfer a patient to another hospital for services the Hospital does not offer and informs the patient or the legally responsible person of the risks and benefits to the patient of the Transfer, but the patient or the person acting on the patient's behalf refuses to consent to the Transfer, the Hospital must provide all reasonable steps to secure a written refusal from the patient or the person acting on the patient's behalf.

- a. The written refusal should indicate the person has been informed of the risks and benefits of the Transfer and state the reasons for such refusal.
- b. The patient's medical record shall contain a description of the proposed Transfer that was refused by the patient or the person acting on the patient's behalf.

#### VIII. Stabilized Patient Transfer Requests/Arrangements

A Stabilized patient may be transferred upon request or pursuant to pre-arranged transfers/treatment plans of other entities if the following conditions are met:

- a. Documentation of patient Stabilization has been prepared by a physician or a Qualified Medical Person in consultation with a physician (physician's counter-signature is required on documentation);
- b. The Hospital documents its communication with the receiving hospital, including the date and time of the Transfer request and the name of the person accepting the Transfer;

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- c. If the Transfer is requested by the patient, the request must be in writing and must indicate the reason(s) for the request as well as indicate that the patient is aware of the risks and benefits of the Transfer;
  - d. The patient has been informed of the Hospital’s obligation to provide an Emergency Medical Screening and the necessary Stabilizing treatment;
  - e. The receiving facility: a) has available space and qualified personnel for the treatment of the patient, and b) has agreed to accept the Transfer of the patient and to provide appropriate medical treatment; and
  - f. The patient agrees to the Transfer.
- IX. Physician's Refusal to Transfer

The Hospital shall not penalize or take adverse action against a physician or Qualified Medical Person because of the physician's or LIP's refusal to authorize the Transfer of a patient with an Emergency Medical Condition that has not been Stabilized, or against any Hospital employee because the employee reports a violation of this Policy.

- X. The transferring hospital attending Physician must conduct a Physician to Physician telephone report with the accepting physician at the accepting hospital.
- XI. A transferring hospital RN must conduct a Nurse to Nurse telephone report with the accepting hospital.

a. Central Log

- XII. Each department that receives patients who may come seeking emergency care shall maintain a central log that documents the following information:
  - A. Patient identification;
  - B. Time of presentation to the specific department;
  - C. Mode of arrival;
  - D. Whether medically screened or referred to another department for medical screening; and
  - E. Whether the patient refused treatment, was refused treatment, or whether he or she was transferred, admitted and treated, Stabilized and transferred, discharged, or other disposition.

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VII. The purpose of the log is to track the care provided to each patient who Comes to the Emergency Department seeking emergency medical care. If a patient presents for emergency medical treatment and does not have a scheduled appointment, he/she is entered into the log. If a patient presents and has a scheduled appointment, he/she is not entered onto the log. The log shall be kept for ten years.

#### 1. On-Call Physicians

- A. The Hospital shall compile and maintain a list of on-call physicians who are on the Medical Staff to respond to call to assist, if necessary, in the Medical Screening Examination and to provide treatment necessary to Stabilize a patient with an Emergency Medical Condition.
- B. The list of on-call physicians to respond to emergencies shall be compiled and maintained in a manner that best meets the needs of the Hospital's patients.
- C. Physicians on Hospital's Medical Staff are not required to be on call at all times. However, if a particular specialist is not available, or if a physician cannot respond because of situations beyond his or her control, the LIP may either consult with other physicians in the specialty, if applicable, for direction, and in such case, shall provide emergency services within the Hospital's Capacity and Capability to meet the needs of the individual with an Emergency Medical Condition. Alternatively, the Hospital can transfer the patient if appropriate measures are taken in accordance with Section E herein.
- D. Physicians who are on-call at the Hospital may schedule elective surgery during the time they are on-call, and may be on-call at other hospitals or another Emergency Department, so long as the physician notifies the Hospital of such surgery or On-call status. In such case, the Hospital shall arrange for an appropriate Transfer of individuals in accordance with Section E herein, if necessary.
- E. Failure or refusal of a physician who is on-call to appear at the respective Emergency Department within a reasonable time for reasons not beyond his or her control is considered a violation by both the physician and Hospital of EMTALA.

#### 1. Required Training on EMTALA

- F. Specific training on MSE and Stabilization requirements and Transfer obligations shall be conducted with all physicians and mid-level providers in the following departments:
  - 1. Emergency Department;
  - 2. Ambulatory Care Clinics;

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3. Employee Physician’s Offices;
4. Outpatient Clinics; and
5. Patient Access
6. Signage

G. The Emergency Department and other areas likely to be noticed by all patients entering the Emergency Department, as well as those patients waiting for examination and treatment in areas other than the Emergency Department (that is, entrance, admitting area, waiting room, treatment area) shall post conspicuously a sign specifying the rights of patients with respect to examination and treatment for Emergency Medical Conditions and women in Labor.

H. Monitoring of EMTALA Compliance

I. Any concern with compliance of this Policy should be reported to the Hospital's Corporate Compliance Officer.

1. The Hospital's Corporate Compliance Officer or designee will conduct an investigation of the alleged violation.
2. If after investigation, the Hospital finds substantial reason to believe that another hospital violated EMTALA with an inappropriate Transfer of a patient in an unstable Emergency Medical Condition, the transferring hospital will be contacted and clarification pursued. If a valid violation is found to have occurred, a report shall be made to the Centers for Medicare & Medicaid Services by the Corporate Compliance Officer.
  - a. If after investigation, it is found that the Hospital has breached the EMTALA procedures, action plans to correct and prevent other occurrences will be documented and implemented and the practice monitored by the respective department and Corporate Compliance Officer.