

<b>BAPTIST HEALTHCARE SYSTEM</b>	CATEGORY	EFFECTIVE DATE	REVISED
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## SYSTEM POLICY

**SUBJECT:** EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT (“EMTALA”)

**SCOPE:** All Baptist Healthcare System, Inc. (“BHS”) facilities including but not limited to, the following:

- |                                                                                                                                                                                                                                               |                                                                                                    |
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| <p>All Clinical Departments<br/>(including hospital departments on or off campus)</p> <p>Ancillary Services</p> <p>Admitting/Registration</p> <p>Employed Physicians</p> <p>Hospital owned emergency and critical care transport vehicles</p> | <p>Administration</p> <p>Quality Management</p> <p>Risk Management</p> <p>Emergency Department</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|

**AUTHORIZATION:**

**PURPOSE:** To ensure all BHS facilities comply with the Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42 U.S.C., § 1395 and all federal regulations and interpretive guidelines promulgated thereunder.

**POLICY:**

- A. It is the policy of BHS facilities (also referred to as “hospital” or “hospitals”):
  - 1. to provide a medical screening examination by a physician or qualified medical person to any individual who comes to a dedicated emergency department of the hospital seeking an examination or treatment for a medical condition or who comes upon hospital property, other than to a dedicated emergency department, seeking examination or treatment for an emergency medical condition (whether or not eligible for insurance benefits and regardless of ability to pay) and

2. if it is determined that the individual has an emergency medical condition, to provide the individual with such further medical examination and treatment as required to stabilize the emergency medical condition, within the capability of the hospital, or to arrange for transfer of the individual to another medical facility in accordance with the policy set forth below.
3. the hospital shall not delay the provision of a medical screening examination, further treatment, or appropriate transfer in order to inquire about the individual's method of payment or insurance status.

B. This policy applies to:

1. all individuals coming to a hospital's dedicated emergency department seeking examination or treatment for a medical condition; and
2. all individuals on the hospital's property seeking examination or treatment for an emergency medical condition; and
3. all individuals in a hospital's dedicated emergency department or upon the hospital's property unable to request examination or treatment but whom a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs emergency examination or treatment; and
4. all individuals in any emergency or critical care ground or air transport vehicles owned and operated by the hospital.

C. In no event shall the provision of emergency services and care be based upon or affected by an individual's race, religion, national origin, age, sex, disability, insurance status or ability to pay for medical services, except to the extent that a circumstance such as age, sex or disability affects the provision of appropriate medical care to the individual.

D. It is the policy of BHS that its hospitals report to the appropriate regulatory agency when there is reason to believe that an individual has been received who was transferred from another hospital in violation of the requirements of federal law regarding the transfer of a patient with an emergency medical condition.

E. This policy is not applicable during a national emergency.

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## **I. DEFINITIONS:**

**Appropriate transfer** occurs when: (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 the appropriate space and qualified personnel for the treatment of the individual and has agreed to accept transfer of the individual and to provide appropriate medical treatment; (iii) a physician has agreed to accept and care for the patient; (iv) the transferring hospital sends to the receiving hospital all medical records (or copies thereof) related to the emergency medical condition including available history that are available at the time of transfer pertaining to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnoses, results of diagnostic studies or telephone reports of the studies, treatment provided and the informed written consent or certification required, 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 that any other records that are not readily available at the time of transfer are sent as soon as practicable after the transfer; and (v) the transfer is effected through appropriate medical personnel, transportation and equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer.

**Campus** means the physical area immediately adjacent to the main Hospital, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other areas determined on an individual case basis, by the CMS regional office, to be part of the main Hospital's campus.

**Capabilities** of a hospital refer to the hospital's physical space, equipment, supplies and services (*e.g.* surgery, intensive care, pediatrics, obstetrics, neonatal unit or psychiatry), including ancillary services that the hospital provides. The capabilities of the hospital's staff means the level of care that the hospital's personnel can provide within the training and scope of their professional licenses.

**Capacity** means the ability of the hospital to accommodate the individual requesting examination or treatment. Capacity encompasses number and availability of qualified staff, beds, equipment and the hospital's past practices of accommodating additional patients in excess of its occupancy limits.

**Central Log** is a log that a hospital is required to maintain of all individuals who come to the hospital seeking examination or treatment and the disposition of such individuals, whether the persons were transferred, admitted and treated, stabilized and transferred or discharged. The purpose of the central log is to track the care provided to each individual who comes to the hospital seeking care for an emergency medical condition. The central log includes, directly or by reference, patient logs from other areas of the hospital, such as labor and delivery or psychiatric access centers, where an individual might present for emergency services or receive a medical screening examination instead of in the emergency department as well as any location which provides care under the hospital's provider number.

**Comes to the Emergency Department** means, with respect to an individual who is not a patient (as defined elsewhere herein), that the individual

- (1) has presented at a hospital's dedicated emergency department, as defined elsewhere herein, and requests examination or treatment for a medical condition, or has such a request made on his or her behalf. In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition;
- (2) has presented on hospital property, as defined elsewhere herein, other than the dedicated emergency department, and requests examination or treatment for what may be an emergency medical condition, or has such a request made on his or her behalf. In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs emergency examination or treatment;
- (3) Is in a ground or air ambulance owned and operated by the hospital for purposes of examination and treatment for a medical condition at a hospital's dedicated emergency department, even if the ambulance is not on hospital grounds. However, an individual in an ambulance owned and operated by the hospital is not considered to have "come to the hospital's emergency department": if –
  - (i) The ambulance is operated under communitywide emergency medical service (EMS) protocols that direct it to transport the individual to a hospital other than the hospital that owns the ambulance; for example, to the closest appropriate facility. In this case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto that hospital's property;
  - (ii) The ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the hospital that owns the ambulance; or
- (4) Is in a ground or air nonhospital-owned ambulance on hospital property for presentation for examination and treatment for a medical condition at a hospital's dedicated emergency department. However, an individual in a nonhospital-owned ambulance off hospital property is not considered to have come to the hospital's emergency department, even if a member of the ambulance staff contacts the hospital by telephone or telemetry communications and informs the hospital that

they want to transport the individual to the hospital for examination and treatment. The hospital may direct the ambulance to another facility if it is in “diversionary status,” that is, it does not have the staff or facilities to accept any additional emergency patients. If, however, the ambulance staff disregards the hospital’s diversion instructions and transports the individual onto hospital property, the individual is considered to have come to the emergency department.

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

- (1) it is licensed by the State in which it is located under applicable State law as an emergency room or emergency department;
- (2) it is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or
- (3) during the calendar year immediately preceding the calendar year in which a determination under this section is being made, based on a representative sample of patient visits that occurred during that calendar year, it provides at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

**Emergency Medical Treatment and Active Labor Act (“EMTALA”)** refers to §§ 1866 and 1867 of the Social Security Act, 42 U.S.C. § 1395dd, which obligates hospitals to provide medical screening, treatment and transfer of individuals with emergency medical conditions or women in labor. It is also referred to as the “anti-dumping” statute and COBRA.

**Emergency Medical Condition** means:

- (i) 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
  - (A) 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;
  - (B) Serious impairment to bodily functions; or
  - (C) Serious dysfunction of any bodily organ or part; or
- (ii) With respect to a pregnant woman who is having contractions –

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

**Hospital** means a Medicare facility certified as a hospital with its own provider number.

**Hospital with Emergency Department** means a hospital with a dedicated emergency department, as defined elsewhere herein.

**Hospital Property or Premises** means the entire main hospital campus, including the parking lot, sidewalk, and driveway, but excluding other areas or structures of the hospital's main building that are not part of the hospital, such as physician offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare, or restaurants, shops, or other nonmedical facilities.

**Hospital-Owned Facility which is Contiguous** means any area within the hospital (or a hospital-owned facility) on land that touches land where a hospital's emergency department sits.

**Inpatient** means an individual who is admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services with the expectation that he or she will remain at least overnight and occupy a bed even though the situation later develops that the individual can be discharged or transferred to another hospital and does not actually use a hospital bed overnight.

**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 is in true labor unless a physician or qualified medical person certifies that, after a reasonable time of observation, the woman is in false labor. A woman who is not in true active labor may still have an emergency medical condition if the individual has a medical condition such that the absence of immediate medical attention will place her or her fetus in serious jeopardy.

**Medical Screening Examination** is 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 capabilities 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 until the patient is either stabilized or appropriately transferred. Triage is not a medical screening examination.

**On-Call List** refers to the list that the hospital is required to maintain that defines those physicians who are "on-call" for duty after the initial medical screening examination to provide further

evaluation and/or treatment necessary to stabilize an individual with an emergency medical condition. The purpose of the on-call list is to ensure that the emergency department is prospectively aware of which physicians, including specialists and subspecialists, are available to provide treatment necessary to stabilize individuals with emergency medical conditions.

**Patient** means (1) an individual who has begun to receive outpatient services as part of an encounter, other than an encounter that the hospital is obligated to provide under EMTALA; or (2) An individual who has been admitted as an inpatient, as defined elsewhere herein.

**Physician Certification** refers to written certification by the treating physician ordering the transfer and prior to the individual's transfer, 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 facility outweigh the increased risks to the individual or, in the case of a woman in labor, to the woman or the unborn child, from effecting the transfer. The certification must include a summary of the risks and benefits upon which the certification is based and the reason(s) for the transfer. If the physician is not physically present at the time of transfer, qualified medical personnel can sign the certification as long as such qualified medical personnel are in consultation with the physician and the physician is in agreement with the certification and subsequently, countersigns the certification within the time period required by hospital by-laws, policies, procedures, rules or regulations.

**Qualified Medical Persons or Personnel** refers to those non-physician individuals defined by a hospital's bylaws, rules, regulations or other hospital board approved documents to perform the initial medical screening examinations for those individuals who come to the hospital's dedicated emergency department and request examination or treatment.

**Signage** refers to the signs the hospital is required to post conspicuously in any dedicated emergency department or in a place or places likely to be noticed by all individuals entering the dedicated emergency department as well as those individuals waiting for examination and treatment in areas other than the dedicated emergency department, (*e.g.*, labor and delivery, waiting room, admitting area, psychiatric access center, entrance and treatment areas, off campus departments) informing the patients of their rights under federal law with respect to examination and treatment for emergency medical conditions and women in labor. The sign must also state whether or not the hospital participates in the State's Medicaid program.

**Stabilized** with respect to an emergency medical condition means that no material deterioration of the condition is likely within reasonable medical probability, to result from or occur during the transfer of the individual from the facility or in the case of a woman in labor, that the woman has delivered the child and the placenta. An individual will be deemed stabilized if the treating physician of the individual with an emergency medical condition has determined, within reasonable clinical confidence, that the emergency medical condition has been resolved.

**To Stabilize** with respect to an emergency medical condition means to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no

material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility or in the case of a woman in labor, that the woman has delivered the child and the placenta.

**Stable for Discharge**: An individual is stable for discharge, when within reasonable clinical confidence, it is determined that the individual has reached the point where his/her continued care, including diagnostic work-up and/or treatment, could reasonably be performed as an outpatient or later as an inpatient, provided the individual is given a plan for appropriate follow-up care with the discharge instructions. In the case of an individual who is suffering from psychiatric condition(s), the individual is considered to be stable for discharge when he/she is no longer considered to be a threat to himself/herself or to others.

**Stable for Transfer**: An individual is stable for transfer if the treating physician attending to the individual has determined, within reasonable clinical confidence, that the individual 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 the receiving facility has the capability to manage the individual's medical condition and any reasonably foreseeable complication of that condition. In the case of an individual who is suffering from psychiatric condition(s), the individual is considered to be stable for transfer when he/she is protected and prevented from injuring himself/herself or others.

**Transfer** means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who has been declared dead or who leaves the facility without permission or against medical advice.

**Triage** is a process to determine the order in which patients will be provided a medical screening examination by a physician or qualified medical person. Triage is not the equivalent of a medical screening examination and does not determine the presence or absence of an emergency medical condition.

## **II. MEDICAL SCREENING EXAMINATIONS:**

Each dedicated emergency department that provides emergency medical services must ensure compliance with EMTALA requirements relating to the medical screening process.

**A. General Requirements Regarding When a Medical Screening Examination Must be Provided:**

In general the hospital must provide for an appropriate medical screening examination within the capability of the hospital's dedicated emergency department, to determine whether an emergency medical condition exists (or with respect to a pregnant woman having contractions, whether the woman is in labor) in the following situations:

- (1) when an individual comes to a hospital's dedicated emergency department and the individual requests, or a request is made on the individual's behalf, for examination or treatment for a medical condition; or
- (2) when an individual comes upon hospital property and the individual requests, or a request is made on the individual's behalf for examination or treatment for an emergency medical condition; or
- (3) in either of the above instances, if the individual is unable to ask for examination or treatment but a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs emergency examination or treatment; or
- (4) when an individual presents to a hospital-owned or operated emergency or critical care, ground or air, ambulance and the individual requests, or a request is made on the individual's behalf for examination or treatment for an emergency medical condition unless:
  - a. the ambulance is operated under community wide emergency medical service (EMS) protocols that direct it to transport the individual to a hospital other than the hospital that owns the ambulance in which event the receiving hospital shall provide the medical screening examination; or
  - b. the ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the hospital that owns the ambulance and the physician directs the ambulance to another hospital in which event the receiving hospital shall provide the medical screening evaluation.
- (5) When an individual in a non-hospital-owned emergency or critical care, ground or air, ambulance comes on hospital property. [Note: an individual in a non-hospital-owned emergency or critical care, ground or air, ambulance not on the hospital's property is not considered to have come to the hospital's emergency department when the ambulance personnel contact the hospital by telephone or telemetry communications. A hospital may deny access to patients when it is in "diversionary" status because it does not have the staff

or facilities to accept any additional emergency patients at that time. However, if the emergency or critical care, ground or air, ambulance disregards the hospital's instructions and brings the individual on to hospital grounds, the individual has come to the hospital, and the hospital must provide a medical screening examination.]

**B. Examples When a Medical Screening Examination is Not Required:**

1. if an individual presents to a dedicated emergency department and requests services that are not examination or treatment for a medical condition (such as preventive care services, annual mammography screening);
2. if an individual presents to a dedicated emergency department for the sole purpose of registering for non-emergent outpatient services to be delivered elsewhere in the hospital because the normal registration area is closed;
3. if an individual presents to a dedicated emergency department for direct admission as an inpatient.

**C. Use of Dedicated Emergency Department for Nonemergency Services:**

If an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf 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, the hospital must only perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition. In most cases in which a request is made for medical care that clearly is unlikely to involve an emergency medical condition, an individual's statement that he or she is not seeking emergency care, together with brief questioning by qualified medical personnel, would be sufficient to establish that there is no emergency condition and that the hospital's EMTALA obligation is satisfied.

**D. The Location in Which the Medical Screening Examination Should Be Performed.**

1. The medical screening examination and other emergency services need not be provided in a location specifically identified as an emergency room or a dedicated emergency department. For example, all pregnant women may be directed to the labor and delivery area of the hospital. The hospital may use areas to deliver emergency services that are also used for other in-patient or out-patient services. Medical screening examinations or stabilization may require ancillary services available only in areas or facilities of the hospital outside of the dedicated emergency department.

2. Individuals may be directed to other hospital-owned facilities that are contiguous or part of the hospital's "campus" and which are owned by the hospital and operating under the hospital's provider number. However, the hospital should not move the individual to a non-contiguous or off-campus facility for the medical screening examination or other emergency services. In order for the individual to be directed to the hospital-owned contiguous or on-campus facility, three conditions must be met:
  - a) All persons with the same medical condition are moved to this location regardless of their ability to pay for treatment,
  - b) There is a bona fide medical reason to move the individual, and
  - c) Appropriate medical personnel accompany the individual.

**E. Providing the Medical Screening Examination.**

1. Hospitals are obligated to perform the medical screening examination to determine if an emergency medical condition exists. It is not appropriate to merely "log in" or triage an individual and not provide a medical screening examination.
2. A medical screening examination is the process required to reach with reasonable clinical confidence, the point at which it can be determined whether a medical emergency does or does not exist.
3. Medicare participating hospitals that provide emergency services must provide a medical screening examination to any individual regardless of diagnosis (*e.g.*, labor, AIDS), race, religion, national origin, age, sex, disability, insurance status or ability to pay for medical services. The medical screening examination must be the same medical screening examination that the hospital would perform on any individual coming to the hospital's emergency department with those signs and symptoms, regardless of the individual's ability to pay for medical care.
4. The medical screening examination includes both a generalized assessment and a focused assessment based on the individual's chief complaint, with the intent to determine the presence or absence of an emergency medical condition. Depending on the individual's presenting symptoms, the medical screening examination represents a spectrum ranging 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. A medical screening examination is not an isolated event. It is an on-going process.

5. If the medical screening examination is appropriate, and does not reveal an emergency medical condition, the hospital has no further obligations under EMTALA.
6. If the medical screening examination does reveal an emergency condition and the individual is admitted in good faith as an inpatient in order to stabilize the emergency medical condition, the hospital has no further obligation toward the individual under EMTALA but shall proceed to provide the individual with care governed by the Medicare Conditions of Participation.
7. The individual's medical record must reflect the medical screening examination and continued monitoring according to the individual's needs until he/she is stabilized or appropriately admitted or transferred. There should be evidence of this evaluation prior to discharge or transfer.
8. If the hospital offers a medical screening examination and treatment and informs the individual or a person acting on the individual's behalf of the risks and benefits of refusing the examination and treatment, but the individual or a person acting on the individual's behalf refuses to consent to the examination and treatment, the hospital shall take all reasonable steps to have the individual or a person acting on the individual's behalf sign a form indicating a refusal to permit medical examination and treatment for an emergency medical condition. The medical record shall contain a description of the examination, treatment, or both if applicable, that was proposed but refused by or on behalf of the individual; the risks/benefits of the examination and/or treatment; the reasons for refusal; and if the individual refused to sign, the steps taken to secure the written informed refusal.
9. If, after an initial medical screening examination, a physician or other qualified medical person determines that the individual requires the services of an on-call physician, the on-call physician shall be contacted. The on-call physician shall not refuse to respond to a call on the basis of the individual's race, religion, national origin, age, sex, disability, insurance status or ability to pay for medical services.

**E. Collection of Financial Information and Medical Screening Examination.**

1. Every individual who comes to the hospital's emergency department and requests a medical examination or treatment must be provided a medical screening examination, which must not be delayed to: (a) inquire about the individual's method of payment or insurance status; (b) inform the patient that he or she must pay for his/her care if they choose to be treated; (c) perform insurance verification and authorization; or (d) inform the patient that his/her care will be free or at a lower cost if they transfer to another facility.

2. Emergency department physicians as well as nonphysician practitioners involved in the emergency care of an individual may contact the individual's physician at any time to seek advice regarding the individual's medical history (not payment abilities) as long as the consultation does not delay screening and stabilizing services.
3. A registration process may be initiated as long as the process does not cause a delay in the provision of a medical screening examination and necessary stabilization for an identified emergency medical condition. Basic identifying information may be gathered and entered into the computer to allow for processing of tests in the order entry or applicable systems. Basic information which may be obtained includes, but is not necessarily limited to, individual's full name, date of birth, social security number, family physician and insurance plan information. If the individual's information is already present in the computer files the registrar may verify the existing information.
4. For patients who are enrolled in a managed care plan, prior authorization from the plan shall NOT be required or requested before providing an appropriate medical screening examination and/or necessary stabilizing treatment. Neither the performance of the medical screening examination nor the provision of stabilizing treatment will be conditioned on an individual's completion of a financial responsibility form or payment of a copayment.
5. The medical screening examination should be the same medical screening examination the hospital would perform on any individual coming to the hospital's dedicated emergency department with those signs and symptoms, regardless of the individual's financial status, payment source or ability to pay.
6. The registrar must refrain from making remarks, which the individual might interpret to mean services may not be provided based on his/her ability to pay. Individuals who inquire about financial responsibility for emergency care should be encouraged to delay such a discussion until after the completion of the medical screening examination.
7. If an individual expresses the intent to leave the hospital prior to the performance of a medical screening examination and appropriate stabilizing treatment the individual should be encouraged to remain and should be told of the hospital's obligation to provide a medical screening examination and stabilizing treatment as well as the risks of leaving the hospital prior to the performance of a medical screening examination. The individual should be asked to sign a form indicating refusal of examination and/or treatment. If he/she refuses to sign such a form the discussion should be documented.

8. If an individual leaves the hospital without notifying hospital personnel, this should be documented. The documentation should reflect that the individual had been at the hospital and the time that the individual was discovered to have left the premises.
9. All hospital personnel responsible for obtaining financial information in the emergency department shall be educated regarding EMTALA and its implications regarding the collection of financial information.

**G. Who May Perform the Medical Screening Examination.**

1. Medical screening examinations must be performed by physicians or other qualified medical personnel who are:
  - a) determined qualified by hospital bylaws, rules, regulations or other hospital board approved documents, and
  - b) functioning within the scope of their license and in compliance with State law and applicable State nurse and medical practice acts.
2. When non-physician personnel perform medical screening examinations, the hospital should approve specific screening protocols that outline the examination and/or diagnostic workup required to determine if an emergency medical condition exists and when the physician should be called to examine the patient.
3. If a physician is not physically present at the time an individual is transferred, a qualified medical person may sign a certification after a physician, in consultation with the qualified medical person, agrees with the certification. The physician must subsequently countersign the certification within the time period required by the hospital. The certification must contain a summary of the risks and benefits upon which it is based.

**III. INDIVIDUALS PRESENTING TO OFF CAMPUS HOSPITAL DEPARTMENTS THAT ARE NOT DESIGNATED EMERGENCY DEPARTMENTS:**

1. Each hospital's governing body must assure that the medical staff has written policies and procedures in effect at off-campus departments for appraisal of emergencies and any necessary referral when individuals present to the off-campus department seeking emergency care.
2. Typically, when an individual comes to an off-campus hospital department that does not routinely offer services for emergency medical conditions, it would be appropriate for the department to call emergency medical services (EMS) and to furnish whatever assistance it can to the individual while awaiting EMS personnel.

#### IV. STABILIZATION:

1. Stabilization, with respect to an emergency medical condition, means to either provide such medical treatment of the condition necessary to assure within reasonable medical probability that no material deterioration of the condition is likely to result from, or occur during, the transfer of the individual from a facility, or that the woman has delivered the child and the placenta.
2. An individual will be deemed stabilized if the treating physician or other qualified medical person attending to him/her in the emergency department/hospital has determined within reasonable clinical confidence that the emergency medical condition has resolved.
3. For individuals whose emergency medical condition has not been completely resolved they may still be released if deemed to be Stable for Transfer or Stable for Discharge.
4. 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 treating physician should take precedence over that of the off-site physician.
5. Neither stable for discharge or stable for transfer requires the final resolution of the emergency medical condition.
6. An individual whose condition has not been stabilized may be transferred to another facility if:
  - The individual, after being informed of the risks and the hospital's obligations to provide further examination and treatment sufficient to stabilize the individual's emergency medical condition requests a transfer; or
  - A physician or other qualified medical person in consultation with a physician has signed a certification that the medical benefits of the transfer to another medical facility outweigh the risks to the individual. Any certification signed by a qualified medical person shall be countersigned by the responsible physician within the time period required by the specific hospital.

## V. ON CALL PHYSICIANS:

1. Each hospital must have a documented system for providing on-call coverage, so that the emergency department is prospectively aware of which physicians, including specialists and subspecialists, are available to provide screening and treatment necessary to stabilize individuals with emergency medical conditions.
2. There is no requirement for a sole practitioner to be on-call at all times; however, the hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his/her control.
3. Each facility must establish a process to ensure that when a physician is identified as being “On-Call” to the emergency department for a given specialty, it shall be the duty and the responsibility of that physician to assure the following:
  - a) Immediate availability, at least by telephone, to the emergency department physician for his/her scheduled “on-call” period, or to secure a qualified alternate in the event he/she is temporarily unavailable; and
  - b) Arrival or response to the emergency department within a reasonable timeframe as specified by the hospital bylaws, policies, procedures, rules or regulations.
4. The medical staff bylaws or appropriate hospital policy and procedure should define:
  - patients with emergency medical conditions; and
  - actions to be taken when a practitioner fails to respond, including initiation of chain of command.
5. When a physician is on-call in his/her office, the emergency department may not refer emergency cases to the physician’s office for the provision of a medical screening examination and treatment. Facilities must establish a process to ensure that a physician comes to the hospital to examine the patient. Provided, however, if an emergency department physician performs a medical screening examination and deems an individual not to have an emergency medical condition then the individual may be directed to his/her physician’s office.
6. Each hospital must have policies and procedures to be followed to meet the needs of its emergency medical patients if it elects to permit on-call physicians to schedule elective surgery during the time that they are on call or to permit on-call physicians to have simultaneous on-call duties at other hospitals.

7. The facility must document on the transfer form 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.
8. The hospital must keep a record of individuals on-call for at least five years. Each hospital must develop a mechanism for maintaining accurate on-call lists to be retained.

## **VI. TRANSFERS:**

1. Any transfer of an individual with an emergency medical condition must be initiated either by the written request from the patient or the person acting on the patient's behalf for such transfer or by a physician order with the appropriate physician certification or certification by another qualified medical person in consultation with a physician.
2. The transfer of a patient shall not be predicated upon arbitrary, capricious or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition or economic status.
3. If the hospital offers to transfer an individual or a person acting on the individual's behalf to another facility and informs the individual of the risks and benefits to the individual of the transfer but the individual or the person acting on the individual's behalf refuses to consent to the transfer, the hospital must provide all reasonable steps to secure a written refusal from the individual or the person acting on the individual's behalf. The written refusal should indicate the individual has been informed of the risks and benefits of the transfer and state the reasons for such refusal. The individual's medical record must contain a description of the proposed transfer that was refused by the patient or the person acting on the individual's behalf.
4. An individual may not be transferred with an emergency medical condition that has not been stabilized unless:
  - a) 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 the transfer. The request must be in writing and indicate the reasons for the request as well as indicate that the individual or person acting on the individual's behalf is aware of the risks and benefits of the transfer; or

- b) 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 individual 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 as well as the reason for transfer. The physician certification that the benefits reasonably expected from the provision of appropriate medical treatment at another facility outweigh the risk of the transfer is not required for transfers of individuals who no longer have an emergency medical condition.
5. If a physician is not physically present at the time a patient is transferred, a qualified medical person (as determined by the hospital bylaws, rules, regulations or other hospital board approved document), may sign a certification after a physician, in consultation with the qualified medical person, agrees with the certification and subsequently countersigns the certification within the time period required by the hospital. The certification must contain a summary of the risks and benefits upon which it is based.
6. Each facility, through its designated personnel and/or emergency department physicians must obtain the consent of the receiving or recipient hospital and the receiving physician before the transfer of the patient and must make the appropriate arrangements for the patient transfer with the receiving hospital and physician.
7. A transfer to another facility will be appropriate only in those cases in which:
- The transferring hospital provides medical treatment within its capabilities that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child.
  - The receiving facility has available space and qualified personnel for the treatment of the individual and has agreed to accept transfer of the individual and to provide appropriate treatment and a physician has agreed to accept and care for the patient.
  - A physician has agreed to accept and care for the patient.
  - The transferring hospital sends to the receiving facility all medical records (or copies thereof) related to the emergency condition which the individual has presented that are available at the time of transfer, including available history, records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnoses, results of

diagnostic studies or telephone reports of the studies, treatment provided, results of any tests and the informed written consent or written certification hereinbefore described. This documentation must also include the name and address of any on-call practitioner who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment. Other records (*e.g.*, test results not yet available from the transferring hospital at the time of the patient transfer) must be sent as soon as practical after such transfer. Records must accompany the patient whether or not the patient's emergency medical condition is stabilized.

- 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 transfer. The physician is responsible for determining appropriate mode of transport, equipment, and transporting professionals to be used for the transfer.

## **VII. DUTY OF RECEIVING HOSPITAL TO ACCEPT TRANSFERS:**

1. A hospital that has specialized capabilities or facilities (*e.g.*, neonatal intensive care units, psychiatric units or with respect to rural areas, regional referral centers) may not refuse to accept from a referring hospital an appropriate transfer of an individual requiring such specialized capabilities or facilities if the receiving or recipient hospital has the capacity to treat the individual.
2. If the transferring hospital wants to transfer an individual because it has no beds or is overcrowded, but the individual does not require any "specialized" capabilities, the receiving hospital is not obligated to accept the individual.
3. The number of patients that may be occupying a specialized unit, the number of staff on duty, or the amount of equipment on the hospital's premises do not in and of themselves reflect the capacity of the hospital to care for additional patients. If a hospital generally has accommodated additional patients by whatever means (*e.g.* moving patients to other units, calling in additional staff, borrowing equipment from other facilities) it has demonstrated the ability to provide services to patients in excess of its occupancy limit.

## VIII. REPORTING INAPPROPRIATE TRANSFERS:

1. All hospital medical staff and employees, in particular those that work in the emergency, labor and delivery or admitting departments and who have “reason to believe,” as defined below, that the hospital received an inappropriate transfer in violation of the law, shall report the incident to the Compliance Officer of the Hospital or designee, as soon as possible for investigation.

Factors that might give rise to “reason to believe” that an apparent receipt of inappropriate transfer may have occurred include, but are not limited to, the following:

- a) a transfer was made even though (1) the risks of the transfer outweighed the expected medical benefits of the medical treatment; (2) the individual transferred did not request the transfer; and (3) neither a physician nor a qualified medical person of the transferring hospital certified that the benefit of medical treatment at the receiving hospital outweighed the increased risks of the transfer;
  - b) the transferring hospital did not provide sufficient stabilizing medical treatment, within its capability, prior to the transfer;
  - c) the transfer was made even though the transferring hospital was notified that the hospital did not have available capacity for the treatment of the individual;
  - d) the transfer was made without the provision of appropriate level of qualified personnel and/or transportation equipment;
  - e) representatives of the transferring hospital have stated to the receiving hospital personnel that the transfer was made for financial reasons, or for any non-medical reason; or
  - f) the hospital received no advance notification of the transfer of a patient with an emergency medical condition.
2. The Hospital Compliance Officer or designee shall promptly investigate all reports of apparent inappropriate transfers. The investigation may include, but not be limited to, the following, at the discretion of the Hospital Compliance Officer or designee:
    - a) interviewing the reporting individual to elicit additional information;
    - b) contacting the transferring hospital to elicit additional information, including a copy of the sending facility’s medical record;

- c) requesting that the Medical Director of the Emergency Department, in consultation with the appropriate Medical Staff Department Chairperson, review the case for medical appropriateness;
  - d) discussing the transfer circumstances with the transferred individual and/or his or her family; and
  - e) consulting with Hospital legal counsel.
3. At the conclusion of the investigation regarding the alleged inappropriate transfer, the Hospital Compliance Officer or designee shall determine whether there is “reason to believe” that an apparent inappropriate transfer occurred.
4. If based on the investigation, the Hospital Compliance Officer or designee determines there is “reason to believe” that an inappropriate transfer has occurred, the Hospital Compliance Officer or designee shall contact hospital legal counsel. If hospital legal counsel concurs in the finding, based on the facts presented, that there is reason to believe an inappropriate transfer has occurred, the Hospital Compliance Officer or designee shall contact a member of senior administration of the transferring hospital and inform him or her of the mandatory legal obligation to report to HCFA the transfer and the supporting facts.
5. The Hospital Compliance Officer or designee shall then report the transfer to the appropriate government office orally followed by written letter as follows:

Baptist Regional Medical Center: Division of Licensing and Regulation  
Office of Inspector General  
Room 433  
Regional State Office Building  
85 State Police Road  
London, Kentucky 40741  
Attn: Regional Program Manager  
(606) 878-7827

Central Baptist Hospital: Division of Licensing and Regulation  
Office of Inspector General  
Eastern State Hospital  
627 West Fourth Street  
Lexington, Kentucky 40508  
Attn: Regional Program Manager  
(606) 246-2301

Western Baptist Hospital: Division of Licensing and Regulation  
Office of Inspector General  
Western State Hospital  
2400 Russellville Road  
Hopkinsville, Kentucky 42240  
Attn: Regional Program Manager  
(270) 885-6143 Ext. 480

Baptist Hospital East and Baptist Hospital Northeast: Division of Licensing and Regulation  
Office of Inspector General  
L&N Building  
2<sup>nd</sup> Floor East  
908 West Broadway  
Louisville, Kentucky 40203  
Attn: Regional Program Manager  
(502) 595-4079

6. The report should be made as soon as reasonably possible after the Hospital Compliance Officer or designee determines and has received concurrence by hospital legal counsel that there is reason to believe that a transfer appears to have been inappropriate, preferably within seventy-two (72) hours.

#### **IX. SIGNAGE:**

1. Each designated emergency department must post one or more signs conspicuously or in a place or places likely to be noticed by all individuals entering the emergency department, as well as those individuals waiting for examination and treatment in areas other than traditional emergency departments (that is labor and delivery, admitting area, waiting room, psychiatric access center, entrance and treatment area and off campus departments). In general, the sign(s) should be visible from anywhere in the area or a distance of twenty (20) feet, whichever is less.
2. This signage must provide, at a minimum, the following:
  - a) Identification that the facility participates in Medicaid;
  - b) Specific rights of patients with emergency conditions and women in labor;
  - c) Clear wording in simple terms and language(s) that are understandable by the population served by the hospital (*e.g.*, a facility which serves a large number Spanish speaking people should have a sign in Spanish).

3. The content of the signage must contain the following language:

#### **IT'S THE LAW!**

***If you have a medical emergency or are in labor, you have the right to receive, within the capabilities of this hospital's staff and facilities:***

- ***An appropriate medical screening examination***
- ***Necessary stabilizing treatment (including treatment for an unborn child)***
- ***An appropriate transfer to another facility even if you cannot pay or do not have medical insurance or you are not entitled to Medicare or Medicaid.***

***This hospital (does/does not) participate in the Medicaid program.***

#### **X. CENTRAL LOG:**

1. Each dedicated emergency department must maintain a central log to include information on each individual who comes to the hospital requesting treatment, including those individuals presenting to labor and delivery, psychiatric access centers and other areas where emergency medical conditions are evaluated and/or treated.
2. Each hospital has the discretion to maintain the central log in a form that best meets the needs of its patients.
3. All logs must be available in a timely manner for surveyor review.

The log must contain:

- the name of the individual seeking assistance; and
- the disposition (permitted dispositions include: 1) patient refused treatment, 2) transferred, 3) admitted and treated, 4) stabilized and transferred, or 5) discharged.

**XI. RECORD KEEPING:**

All BHS facilities, whether transferring or receiving patients, must maintain for a minimum period of five (5) years the following:

1. medical and other records related to individuals transferred to or from the Hospital;
2. on-call schedules which list the on-call physicians that are on duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition; and
3. a central log on each individual who comes to the Hospital.

**XII. PHYSICIAN AND EMPLOYEE PROTECTION FOR REPORTING VIOLATION:**

Hospitals may not penalize or take adverse action against a physician or a qualified medical person because the physician or qualified medical person refused to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of a requirement of EMTALA. If an employee identifies a potential violation of a requirement of EMTALA the employee should report such to his or her supervisor who should thoroughly investigate and report the potential violation to the Hospital Compliance Officer.

**APPROVED:**

---

Donald R. Riggs  
BHS Compliance Officer

Date: \_\_\_\_\_

**DRAFT**

**EMTALA TRANSFER FORM**

Reason for Transfer: (Please check one and provide explanation.)

Unable to provide services necessary for care: \_\_\_\_\_

Patient's request: \_\_\_\_\_

A person legally authorized to act on the patient's behalf requests transfer: \_\_\_\_\_

Name of person requesting transfer: \_\_\_\_\_ Relationship: \_\_\_\_\_

Mental Inquest Warrant \_\_\_\_\_

To appropriate level of care \_\_\_\_\_

Potential risks of transfer:

Displacement of IV or other tubes enroute

Transportation Risk

Delivery in route

Deterioration of condition/Death

Other \_\_\_\_\_

Potential benefits of transfer:

Availability of resources

Continuity of Care

Patient preference

Other \_\_\_\_\_

Risks/Benefits of transfer explained to:  Patient  Family  Other: \_\_\_\_\_

Relationship: \_\_\_\_\_

After examination of this patient, and, based on information available at this time, the medical benefits reasonably expected from provision of appropriate treatment at \_\_\_\_\_ outweigh the increased risk, if any, to the individual's medical condition and, in the case of labor, to the unborn child's medical condition from effecting the transfer.

Receiving facility notified and accepted patient indicating capability and capacity to treat  Yes  No

Name of person and facility \_\_\_\_\_

Receiving physician notified and accepted patient  Yes  No \_\_\_\_\_

Name of person and facility

Yes  No This transfer was necessitated as a result of an on-call physician having refused or failed to appear within a reasonable time to provide necessary stabilizing treatment. If yes, list the name and address of that physician: \_\_\_\_\_

Patient condition:

Stable or has been stabilized, such that, within reasonable medical probability, no deterioration of the patient's condition is likely to result from transfer.

Condition has not been stabilized, but the expected medical benefits of transfer outweigh the risks associated with the transfer and medical treatment has been provided within the capability of the Hospital to minimize the risks to the patient from transfer.

Patient is in labor but the expected medical benefits of transfer outweigh the risks associated with the transfer and medical treatment has been provided within the capability of the Hospital to minimize the risks to the patient and unborn baby from transfer.

Psychiatric patient for whom treatment has been provided within the capability of the Hospital to minimize the risks of patient harming self or others during transfer.

Terminal condition (extended care facilities/hospice discharges)

Qualified Medical Person signature: \_\_\_\_\_ Date \_\_\_\_\_ Time: \_\_\_\_\_  
(if transferring MD not available to sign)

Transferring Physician signature: \_\_\_\_\_ Date \_\_\_\_\_ Time: \_\_\_\_\_

(Please check the applicable statement and sign below)

I acknowledge that I understand the risks and benefits of the transfer and therefore consent to transfer.

I acknowledge that I understand the risks and benefits of transfer, however, I still refuse to be transferred.

\_\_\_\_\_  
Patient / Legally authorized individual signature Relationship Witness Signature

The following was sent with the patient to the receiving facility:  Copy of Chart  Copies of X-rays/diagnostic procedures.

Report communicated to \_\_\_\_\_ by \_\_\_\_\_ at \_\_\_\_\_ (time)  
Patient left at \_\_\_\_\_ per:  Ambulance  Private Vehicle  other \_\_\_\_\_

DRAFT

**AGAINST MEDICAL ADVICE: REFUSAL OF MEDICAL SCREENING/EXAMINATION/TREATMENT/TRANSFER FORM**

PATIENT NAME: \_\_\_\_\_

MEDICAL RECORD # \_\_\_\_\_

DATE: \_\_\_\_\_

**EMERGENCY MEDICAL SCREENING EXAMINATION OFFERED:**

\_\_\_\_\_ I hereby acknowledge that I have been informed of my right to receive an emergency medical screening examination to determine whether I have an emergency medical condition as well as subsequent medical treatment. I understand \_\_\_\_\_ Hospital is obligated and willing to provide such medical screening examination and medical treatment.

**TRANSFER TO ANOTHER FACILITY FOR FURTHER MEDICAL TREATMENT OFFERED:**

\_\_\_\_\_ I hereby acknowledge that I have been informed of the medical benefits of being transferred to another facility for further medical examination and treatment because \_\_\_\_\_ Hospital does not have the capacity and/or capability of treating my emergency medical condition.

**CONTINUED CARE AT \_\_\_\_\_ HOSPITAL OFFERED:**

\_\_\_\_\_ I hereby acknowledge that I have been informed of the medical benefits of receiving further medical treatment at \_\_\_\_\_ Hospital in accordance with my physician's orders.

**POTENTIAL BENEFITS OF SERVICES OFFERED:      POTENTIAL RISKS OF REFUSING SERVICES:**

- \_\_\_\_\_ Improved/stabilized condition
- \_\_\_\_\_ Prevent deterioration
- \_\_\_\_\_ Improved condition of fetus
- \_\_\_\_\_ Preserve life
- Other: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

- \_\_\_\_\_ Deterioration of condition
- \_\_\_\_\_ Deterioration of fetal condition
- \_\_\_\_\_ Permanent impairment
- \_\_\_\_\_ Death
- Other: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

I understand the benefits of receiving the care, treatment and/or transfer, which has been offered to me. I understand the risks and complications of not receiving the care, treatment and/or transfer, which has been offered to me. I understand that my refusal to receive such care, treatment and/or transfer may place my health and life at risk. I also understand, if I am pregnant, that the health and life of my unborn child may be at risk. I have had the opportunity to ask questions, all of which have been answered to my satisfaction.

Notwithstanding the recommendation by the Hospital and/or physicians, **I hereby refuse to have the care, screening, treatment and/or transfer, which has been offered to me.** I understand that refusing the offered services is **AGAINST MEDICAL ADVICE**. I hereby release \_\_\_\_\_ Hospital, its physicians, employees and agents, and any other persons participating in my care from any responsibility whatsoever for adverse results which may occur as a result of my refusal to have the care, treatment and/or transfer.

\_\_\_\_\_  
Patient/Legally authorized individual signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
If signed by other than patient, indicate relationship