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SAMPLE HOSPITAL DIVERSION POLICY

[NOTE: This is a sample diversion policy based on EMTALA regulations and Interpretive Guidelines. Specific application of the policy may depend on the hospital's capacity, capabilities, personnel, policies governing the provision of emergency care, and EMS protocols in the hospital's community. Hospitals should review their circumstances and modify the policy accordingly].

PURPOSE: On occasion, HOSPITAL may be temporarily overwhelmed by the volume of emergency patients or its lack of capacity to care for patients, thereby necessitating the diversion of in-bound ambulances to other facilities. This policy establishes standards and processes for ensuring that such diversions are handled properly so that persons may receive appropriate emergency care without undue delay consistent with applicable law.

POLICY: HOSPITAL will divert in-bound ambulances to other facilities when HOSPITAL lacks the capacity and capability to properly care for the patient at HOSPITAL. If a person arrives at HOSPITAL despite the diversion, HOSPITAL will provide appropriate emergency treatment and/or effect a proper transfer to another facility consistent with the requirements of the Emergency Medical Treatment and Active Labor Act ("EMTALA").

PROCEDURE

1. LIMITS ON DIVERSION. Hospital will not divert potential patients except as follows:

a. In-Bound Ambulance. HOSPITAL will not divert an in-bound ground or air ambulance unless HOSPITAL is on Diversion Status as described below. If HOSPITAL is not on Diversion Status but HOSPITAL personnel believe that the patient needs care that HOSPITAL cannot provide as effectively as another facility, HOSPITAL personnel shall discuss their concerns with the ambulance and recommend that the ambulance take the patient to the other facility; however, HOSPITAL should not divert the ambulance or suggest that HOSPITAL will refuse to treat the patient if brought to HOSPITAL. The HOSPITAL personnel who communicated with the ambulance should document such communications in the Emergency Department Log *[or other appropriate record].*

b. HOSPITAL-Owned Ambulance. HOSPITAL will not transfer or divert a HOSPITAL-owned ambulance to another facility unless: (1) the patient or their legally authorized surrogate requests the diversion; (2) the ambulance is operated under community-wide emergency medical service ("EMS") protocols that direct the ambulance to another facility; (3) the ambulance is operated under the direction of a physician who is not employed by or otherwise affiliated with HOSPITAL; or (4) a HOSPITAL physician certifies that the benefits of the diversion outweigh the risks to the patient, and the HOSPITAL otherwise effects an appropriate transfer as required by EMTALA. (See Policy No. ___, Emergency Treatment). The ambulance personnel and, if applicable, the HOSPITAL physician shall document the circumstances of the diversion or transfer in the ambulance log and the Emergency Department Log *[or other appropriate record].*

c. Transfer From Another Facility. If another facility asks to transfer an unstabilized patient to HOSPITAL, HOSPITAL shall accept the transfer if (1) HOSPITAL has specialized capabilities that the other facility lacks, such as *[specify any specialized capabilities of HOSPITAL, e.g., mental health, neurosurgery, NICU, burn unit, obstetrics, etc.]*; and (2) HOSPITAL has the capacity to treat the

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patent. HOSPITAL may decline the transfer if (1) HOSPITAL lacks capacity to treat the patient (*e.g.*, HOSPITAL is on Diversion Status as described below); or (2) the transferring facility has the same capacity and capabilities as HOSPITAL. All requests to accept transfers shall be directed to *[JOB TITLE]. [JOB TITLE]* shall consult with relevant health care providers, including specialists, and confirm HOSPITAL's capability and capacity before agreeing to accept or declining the transfer on behalf of HOSPITAL. *[JOB TITLE]* shall document the communications and circumstances of the transfer in the Emergency Department Log *[or other appropriate record],* and shall notify the Emergency Department or other relevant department of the anticipated transfer.

d. Other Persons. Prior to the person's arrival at HOSPITAL, HOSPITAL may divert a person who is not in an in-bound ambulance or at another facility. For example, if the person is at home or in an in-bound private car, HOSPITAL may instruct the person to go to another facility. In doing so, HOSPITAL shall consider the person's best interest, and should not divert the person due to financial concerns or illegal discrimination. (*See* Policy No. ___, Acceptance of Patients). The HOSPITAL personnel who communicated with the person shall document such communications in the Emergency Department Log *[or other appropriate record].*

e. Persons Who Arrive at HOSPITAL Despite Diversion Status. If a person arrives at HOSPITAL seeking emergency care, HOSPITAL will provide an appropriate screening examination, stabilizing treatment and/or an appropriate transfer consistent with EMTALA. (*See* Policy No. ___, Emergency Treatment). HOSPITAL will provide such care whether or not HOSPITAL is on Diversion Status, and whether or not the person or ambulance disregarded HOSPITAL's attempt to divert the person. HOSPITAL may transfer an unstabilized patient if either (1) the patient or their surrogate consent to the transfer, or (2) a physician certifies that the benefits of transfer outweigh the risks, and the hospital otherwise effects an appropriate transfer consistent with EMTALA requirements. (*See* Policy No. ___, Emergency Treatment). Another hospital with specialized capabilities (including those capabilities which HOSPITAL lacks) is obligated to accept the transfer.

2. DIVERSION STATUS. HOSPITAL may divert an in-bound ambulance or decline to accept a transfer from another facility if HOSPITAL is on Diversion Status with regard to the services relevant to the patient's condition.

a. Standard for Diversion. HOSPITAL may initiate Diversion Status if HOSPITAL lacks the capacity or capability to care for additional emergency patients after considering:

□ The overall best interests of patients and persons who need emergency services.

□ The number and availability of qualified staff, beds and equipment reasonably necessary to care for additional emergency patients. In determining available resources, HOSPITAL should include resources that would otherwise be reserved for potential inpatient emergencies or anticipated elective admissions. All unassigned beds that are appropriate for emergency care shall be deemed available.

□ HOSPITAL's past practices of accommodating additional patients, including utilizing resources that are appropriate for but not normally assigned for emergency care, calling back staff, expedited discharges, *etc.* if HOSPITAL utilized such methods in the past to provide overflow emergency services.

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Hospital shall not divert an in-bound ambulance due to financial considerations.

b. Efforts to Avoid Diversion. HOSPITAL will initiate Diversion Status only after HOSPITAL has exhausted all internal resources to meet the current patient load, including reasonable attempts to call back staff; expedite appropriate discharges; open additional available beds appropriate for emergency patient care; etc.

c. Types of Diversion. HOSPITAL may initiate varying levels of Diversion Status depending on the circumstances, including the following:

□ **Emergency Department Diversion:** HOSPITAL's emergency department is unable to safely accept any in-bound ambulance traffic. Ambulances should be diverted to other facilities.

□ **Specialty Diversion:** HOSPITAL is unable to care for patients requiring certain types of specialty services (*e.g.*, neurology, trauma, mental health, obstetrics, *etc.*) that would normally be within HOSPITAL's capability. Emergency patients requiring such specialty services should be diverted to other appropriate facilities.

□ **Critical Care Diversion:** HOSPITAL has no monitored beds available. Emergency patients requiring monitored beds should be diverted to other appropriate facilities.

□ **Disaster Diversion:** HOSPITAL is currently responding to a mass casualty incident and has instituted a disaster plan. All in-bound ambulances not involved in the incident should be diverted to other facilities.

3. INITIATING DIVERSION STATUS. Diversion Status shall be initiated as follows:

□ **Authorized Personnel.** Diversion Status may only be initiated by *[JOB TITLE, e.g., EMERGENCY DEPARTMENT SUPERVISOR, CHARGE NURSE, AND/OR ADMINISTRATOR ON DUTY]* after consulting with the emergency department physician. Emergency department physicians or other health care providers who believe that Diversion Status should be initiated should immediately contact *[JOB TITLE].*

□ **Notice.** Upon initiating Diversion Status, the *[JOB TITLE]* shall immediately notify the following entities that HOSPITAL is on Diversion Status for the specified services.

□ The statewide EMS dispatch service and any local 911 dispatch services;

□ Local EMS providers, including ground and air ambulance services, fire departments, and police and sheriff departments;

□ Area hospitals that may receive diverted ambulances; and

□ Other emergency responders or health care entities that may be affected by HOSPITAL's Diversion Status.

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□ **Documentation.** Upon initiating Diversion Status, the *[JOB TITLE]* shall immediately document in the Emergency Department Log *[or other appropriate record]*:

□ The date and time that Diversion Status was initiated;

□ the person initiating Diversion Status;

□ The circumstances that justified Diversion Status, including steps taken to avoid or mitigate Diversion Status; and

□ The notice given to EMS providers.

□ **Monitoring.** The *[JOB TITLE]* shall continually monitor the conditions that necessitated Diversion Status. Diversion Status is intended to be temporary, and HOSPITAL should take appropriate action to modify or terminate Diversion Status as quickly as possible, including reasonable attempts to call back staff; expedite appropriate discharges; open additional available beds appropriate for patient care; *etc.*

4. RENEWING DIVERSION STATUS. Diversion Status will automatically terminate after four (4) hours unless the *[JOB TITLE]* renews the Diversion Status.

□ **Documentation.** Upon renewal, the *[JOB TITLE]* shall document in the Emergency Department Log *[or other appropriate record]*:

□ The date and time that Diversion Status was renewed;

□ The person renewing Diversion Status;

□ The circumstances that justified renewal of the Diversion Status; and

□ The notice given to EMS providers.

5. TERMINATING DIVERSION STATUS. Diversion Status will automatically terminate after four (4) hours unless renewed by *[JOB TITLE]*. In addition, Diversion Status may be terminated at anytime by the following:

□ **Authorized Personnel.** Diversion Status may be terminated by *[JOB TITLE]* after consulting with the emergency department physician. Emergency department physicians or other health care providers who believe that Diversion Status should be terminated should contact *[JOB TITLE].*

□ **Notice.** Upon terminating Diversion Status, *[JOB TITLE]* shall immediately notify the entities who were notified of the Diversion Status.

□ **Documentation.** Upon terminating Diversion Status, the *[JOB TITLE]* shall immediately document in the Emergency Department Log *[or other appropriate record]*:

□ The date and time that Diversion Status was terminated;

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- □ The name of the person terminating Diversion Status;
- □ The circumstances that justified termination of Diversion Status; and
- □ The notice given to EMS providers.

6. COMMUNITY CALL PLAN. *[NOTE: In 2008, CMS proposed allowing hospitals in a community to establish a community call plan whereby the hospitals may divide responsibility for providing call coverage for the community. Under the proposal, hospitals might divide the responsibility by specific service (e.g., hospital X provides call coverage for neurology, while hospital Y provides call coverage for NICU); or, alternatively, by time period (e.g., hospital x provides neurology call during days 1-15, while hospital Y provides neurology call during days 15-31). These rules have not been finalized, but hospitals in the same community may consider entering a community call plan if and when the proposals are finalized. The proposal sets forth specific elements that should be included in the community call plan. The community call plan may affect the hospital's capacity or capability, and may be relevant to the hospital's diversion policy. (See CMS-1390-P)]*

RELATED POLICIES

- Policy No. ___, Emergency Treatment (EMTALA)
- Policy No. ___, Acceptance of Patients

REFERENCES

- 42 U.S.C. § 1395dd
- 42 C.F.R. § 489.24
- EMTALA Interpretive Guidelines, CMS State Operations Manual, Appendix V
- *Arrington v. Wong,* 237 F.3d 1066 (9th Cir. 2001) (holding that a hospital may not divert an in-bound ambulance unless the hospital is on diversion).

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