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EMS/Mobile Healthcare Transformative Solutions.

Constructing a New APOT Paradigm

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Overview

- EMTALA Statute, Regulations and Guidance: A Quick Look
- Legal vs. Physical Transfer of Care
- EMS Solutions

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Photographic proof of the APOT problem…

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HELL NO

EMTALA Statute, Regulations and Guidance

A Quick Look

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Medical Screening Exam Requirement

- If a hospital has an ED, it must provide a medical screening exam (MSE) to anyone who comes to the ED
- Purpose of MSE is to determine if an *emergency medical condition* exists

When Does the Hospital's EMTALA Duty of Care Arise?

- When the patient "comes to the ED"
  - So, what does it mean to "come to the ED?

These are the four scenarios which give rise to a hospital's legal duty of care to the patient under Federal law

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The Hospital's Legal Duty of Care Applies When a Patient:

1. Presents to the ED
2. Presents on "hospital property"
3. Is in a ground or air ambulance owned and operated by the hospital
4. Is in a non-hospital-owned ambulance on hospital property

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Definition of "Hospital Property"

The physical area immediately adjacent to the provider's main buildings, 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 provider's campus.

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42 CFR 413.65

When an EMS Patient Becomes a Hospital Patient

- Since a hospital's legal duty to the patient under EMTALA arises once a patient is on hospital property, or 250 yards of it, the patient becomes a ***hospital patient*** upon EMS arrival

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When an EMS Patient Becomes a Hospital Patient

- This happens by operation of Federal law
- Therefore, this is the ***legal*** transfer of care
  - This means the hospital cannot delay the imposition of that legal duty of care by refusing to "accept" responsibility for the patient from EMS

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When an EMS Patient Becomes a Hospital Patient

- Under Federal law, the hospital's legal duty to a patient on its property applies regardless of whether the patient:
  - Is on the ambulance gurney in the hallway
  - Is in a waiting room
  - Is on a portable cot
  - Is waiting inside the ambulance in a hospital parking lot

Special Rules for Non-Hospital Owned Ambulances

- If a patient is in a ***non-hospital*** owned and operated ambulance and ***not*** on hospital property:
  - The patient is ***not*** considered to have "come to the hospital" – and thus the hospital's EMTALA duties do not apply – simply because the EMS crew contacts the hospital by phone or radio

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ED Diversions Under EMTALA

- A hospital ***may*** divert a non-hospital owned ambulance ***if*** it is "diversionary status"
  - "It does not have the staff or facilities to accept any additional emergency patients"

ED Diversions Under EMTALA

- "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.***"
  - Thus, the hospital's legal duty of care under EMTALA applies in this situation

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CMS Guidance

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"Patient Parking" (a.k.a. "Wall Time")

CMS State Operations Manual
Appendix V
Section 489.24(a)(1)(i)

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CMS Guidance – Patient Parking

- "Hospitals that deliberately delay moving an individual from an EMS stretcher to an emergency department bed do not thereby delay the point in time at which their EMTALA obligation begins."

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CMS Guidance – Patient Parking

- "…if EMS [brings] an individual to the ED at a time when ED staff was occupied…it could under those circumstances be reasonable for the hospital to ***ask*** the EMS provider to stay with the individual until such time as there were ED staff available…"

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CMS Guidance – Patient Parking

- "…if EMS [brings] an individual to the ED at a time when ED staff was occupied…it could under those circumstances be reasonable for the hospital to ***ask*** the EMS provider to stay with the individual until such time as there were ED staff available…"

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What is inherent in a hospital's right to *ask* an EMS crew to remain with the patient?

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What is inherent in a hospital's right to *ask* an EMS crew to remain with the patient?

The right of the EMS crew to say "NO."

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Legal vs. Physical Transfer of Care

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EMS-Hospital Transfer of Care

Legal ToC

- Per Federal law, occurs upon patient arrival on hospital property

Physical ToC

- Per custom, occurs when a hospital clinician assumes direct monitoring or care of patient

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EMS-Hospital Transfer of Care

Legal ToC

- The hospital has a legal duty to the patient upon legal ToC

Physical ToC

- The hospital does not avoid the imposition of its legal duty of care by delaying physical ToC

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EMS Solutions

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Collaboration is Key

- Even though some of these proposed solutions are ***unilateral***, we strongly advocate that EMS organizations and their hospital partners ***work together*** to identify collaborative solutions that benefit everyone – especially patients

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Establish and Implement an ED Handoff Policy

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Adopt Your Own Policy

- EMS can unilaterally establish a policy informing hospitals that its staff will remain in the ED for a maximum time period
  - For example, 20 minutes

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But remember, there's EMTALA, which establishes the *hospital's* duties, and then there's this…

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TORT LAW

Hospital Patients Requiring Continuing EMS Care

- If a hospital patient is critical, or has a condition for which continued EMS care is necessary to prevent deterioration or death, EMS should remember it may have a tort duty to continue that care

An Exception, Not a Rule

- Data suggest that <10% of all EMS patients will require such continuing emergency care

"Stay" Exceptions

- Your policy should include those critical conditions for which continuing care by EMS in the hospital is necessary
- This should be done in conjunction with your agency medical director

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Sample "Stay" Provisions

a. Any patient in cardiac or respiratory arrest or undergoing active resuscitative efforts;
b. Any patient who is unstable in one or more bodily systems, including cardiovascular or neurological/neurovascular;
c. Any patient who is an active threat to self or others and for whom the withdrawal of trained monitoring could pose a risk;
d. Any patient in active labor, whether or not presenting with complications;
e. Any other patient for whom the ambulance service's medical protocols dictate extended ambulance wait time, as approved by the ambulance service medical director.

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For the Other 90%...

- EMS is within its rights to leave the hospital
  - Give a summary verbal or written report (i.e., field notes or "quick sheet")
  - Inform hospital staff of patient location
    - This information does not necessarily have to be given directly to a clinical staff member

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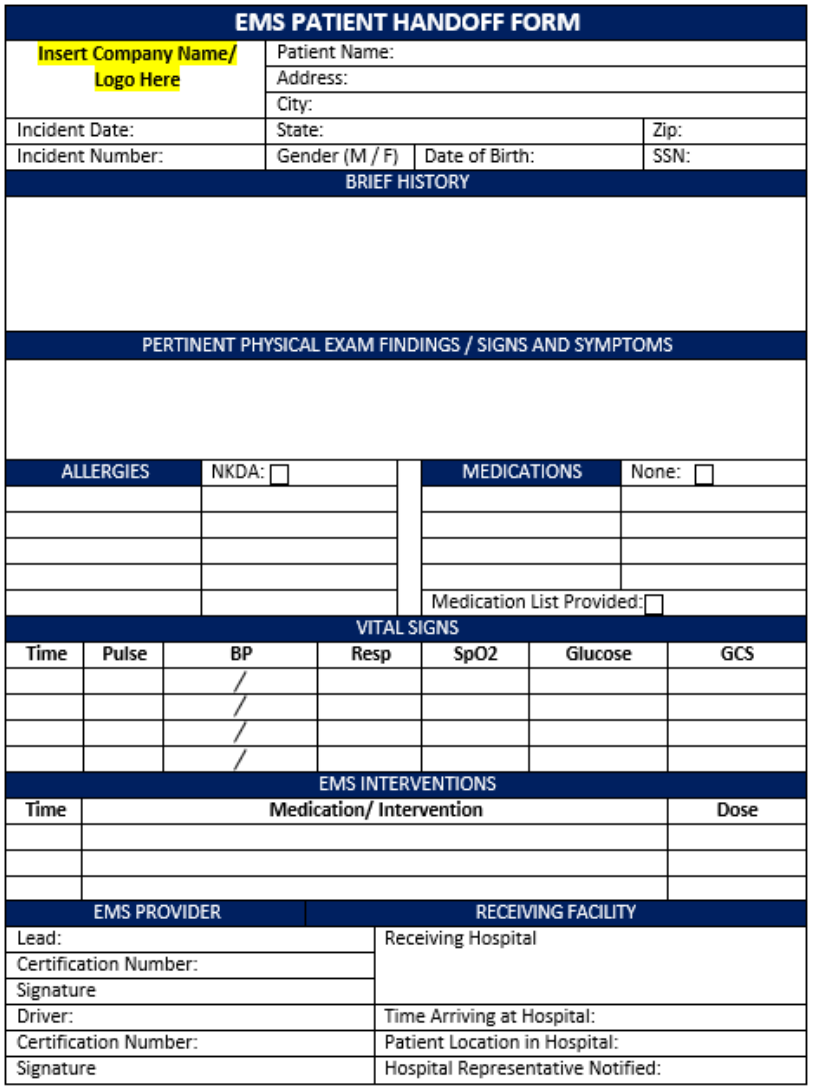
Sample EMS-ED Handoff "Quick Sheet"



EMS PATIENT HANDOFF FORM

Insert Company Name/ Logo Here	Patient Name:		
	Address:		
	City:		
Incident Date:	State:		Zip:
Incident Number:	Gender (M / F)	Date of Birth:	SSN:

BRIEF HISTORY

PERTINENT PHYSICAL EXAM FINDINGS / SIGNS AND SYMPTOMS

ALLERGIES	NKDA: ☐	MEDICATIONS	None: ☐
		Medication List Provided: ☐	

VITAL SIGNS

Time	Pulse	BP	Resp	SpO2	Glucose	GCS
		/				
		/				
		/				
		/				

EMS INTERVENTIONS

Time	Medication/ Intervention	Dose

EMS PROVIDER	RECEIVING FACILITY
Lead:	Receiving Hospital
Certification Number:	
Signature	
Driver:	Time Arriving at Hospital:
Certification Number:	Patient Location in Hospital:
Signature	Hospital Representative Notified:

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Where Can EMS Leave the Pt?

- ED bed, if available
- Portable cot
- Chair in hallway or waiting room if pt can safely sit

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Is it “patient abandonment” if EMS leaves the patient in the ED before hospital staff physically assumes care?

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No

Legal definition of patient abandonment:

Abandonment is defined as the unilateral withdrawal of care by a provider without proper notice to the patient or without affording the patient the opportunity to obtain substitute care when there is still the necessity of continuing medical attention.

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Consider…

- Where are we leaving the patient?
- Whose legal duty is the patient?
- Who works there?
- Do they physically stay with their patients the entire time?

- **A hospital**
- **Theirs**
- **Doctors and nurses**
- **Nope**

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Implementing Your Policy

- While a collaborative approach is best, ambulance services do not need hospital permission or approval to implement such a policy
- Ambulance services are not required to negotiate provisions of this policy
- Federal guidance makes it clear that EMS remaining with a hospital patient is voluntary

Handoff Signatures

- There is no legal requirement to obtain a handoff signature before leaving the hospital
- This is more of a custom
- Nothing in Federal law prohibits EMS crews from leaving a hospital without a handoff signature

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Federal Preemption

- If a state law or local EMS rule or policy *did* prohibit EMS crews from leaving the hospital until hospital staff "accepted" the patient and signed off, such a provision would likely be preempted by Federal law

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Federal Preemption

- State laws and local rules likely cannot delay the point in time at which a hospital's legal duty of care arises under EMTALA

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Negotiate a Contract

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ED Staffing Agreement

- If an ambulance service has the personnel available to provide continuing care to hospital patients it brings to the ED:
  - Consider entering into a contract with the hospital to pay fair market value for the time the ambulance service personnel are providing these services

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Fair Market Value

- It's relatively straightforward to determine FMV for these services
  - Compensation + benefit rates paid to staff
  - Rates for use of EMS equipment and supplies used on hospital patients

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Compliance

- Since the patient becomes a ***hospital patient*** upon EMS arrival on hospital property, time spent by EMS caring for that patient confers a financial benefit on the hospital
  - i.e., they are using EMS staff instead of their own staff to provide this care
  - This results in significant cost avoidance for the hospital

Compliance

- This could raise concerns under the Federal anti-kickback statute if the ambulance service also receives transport referrals from the hospital
- Entering into an agreement for the hospital to pay FMV for the care provided by EMS staff in the ED can mitigate this risk

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Operational Considerations

- Make sure any contract preserves the ambulance service's rights to deploy their people and vehicles as needed
  - In other words, "if we have to leave, we're leaving!"

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Clinical Considerations

- Make sure the contract stipulates that EMS clinicians will operate under their clinical protocols and within their scope of practice

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Stop Feeding the Beast:

Practice ED Avoidance Strategies

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ED Avoidance

- If an ambulance service is not owned and operated by the hospital, it is not covered by EMTALA
- Ambulance services and EMS organizations can implement strategies to reduce unnecessary ED utilization

Telehealth

- Implementing telehealth solutions in the EMS setting can help provide alternatives to transport
- A significant percentage of EMS patients are low acuity and amenable to telehealth
- Low acuity patients are the ones most likely to wait in the ED for long periods

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Non-Transport Protocols

- EMS, in conjunction with medical direction, can implement clinical protocols for treatment in place or field determinations for non-transport

Alternative Destinations

- In conjunction with their medical director, more EMS agencies are implementing programs for transporting patients to non-acute care hospital destinations
- Typically requires legwork and agreements with these destinations, but can also help reduce ED volume

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"EMS Diversion"

- Unless prohibited by EMS system policies and protocols, ambulances can inquire about offload times and transport the patient somewhere else
  - This should be a collaborative decision with the patient or responsible decision maker

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Concluding Thoughts

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Questions and Discussion

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