

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 447
Finance

(Senator Lam)

Hospitals - Emergency Medical Conditions - Procedures

This bill generally codifies the federal Emergency Medical Treatment and Labor Act (EMTALA) in State law. A hospital with an emergency department (ED) must provide, on request of an individual presenting at an ED (or the individual’s representative), an appropriate medical screening to determine whether the individual has an “emergency medical condition.” If a hospital determines that an individual has an emergency medical condition, the hospital must, using the staff and facilities available at the hospital, provide further examination and the treatment required to “stabilize” the emergency medical condition or transfer the individual to another medical facility. A hospital is prohibited from taking adverse action against a provider for not transferring a patient who is not stabilized or against a hospital employee who reports a violation of the bill. The bill establishes civil penalties and authorizes an individual to bring civil action against a hospital for a violation of the bill.

Fiscal Summary

State Effect: The bill generally codifies existing practice and can be implemented with existing budgeted resources. Minimal increase in general fund revenues due to the bill’s penalty provisions for those cases heard in the District Court.

Local Effect: Minimal increase in revenues due to the bill’s penalty provisions for those cases heard in the circuit courts. No effect on expenditures.

Small Business Effect: None.

Analysis

Bill Summary: “Emergency medical condition” means:

- a medical condition that presents through acute symptoms of sufficient severity, including severe pain, and for which the absence of immediate medical attention could be reasonably expected to result in (1) placing the health of the individual or, with respect to a pregnant women, 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 body part; or
- with respect to a pregnant woman who is having contractions (1) there being inadequate time to effect a safe transfer to another hospital before delivery; or (2) transfer posing a threat to the health or safety of the woman or unborn child.

“Stabilize” means (1) for an emergency medical condition, to provide the medical treatment necessary to ensure, 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 the facility or (2) for an emergency medical condition with respect to a pregnant woman, the woman has delivered the newborn, including delivery of the placenta.

A hospital is considered to have met the requirements of the bill if, after offering further examination and treatment or transfer and informing the individual (or their representative) of the risks and benefits of further examination and treatment or transfer an individual or the individual’s representative refuses to consent to further examination or treatment or to a transfer to another medical facility. A hospital must take reasonable steps to secure written informed consent to the refusal of an examination or treatment or transfer from the individual or the individual’s representative.

If an individual has an emergency medical condition that has *not* been stabilized, the hospital may not transfer the individual unless:

- the transferring hospital provides the medical treatment available at the hospital 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 to treat the individual and has agreed to accept the transfer of the individual and to provide appropriate medical treatment;
- the transferring hospital provides to the receiving facility specified medical records;
- the transfer is effected through qualified personnel and transportation equipment, as specified; and

- the individual (or the individual's representative), after being informed of the hospital's responsibilities and the risks of transfer, requests in writing the transfer to another facility and a physician (or a qualified medical provider) has signed a certification and summary of the risks and benefits of transfer, as specified.

If, after the medical screening, a physician determines that an individual requires the services of a physician on the hospital's list of on-call physicians and the on-call physician refuses or fails to appear within a reasonable period of time after notification, the physician who provided notification to the on-call physician is not liable for a penalty for a transfer that otherwise met the bill's requirements.

A hospital that has specialized capabilities or facilities or a regional referral center may not refuse an appropriate transfer of an individual who requires the hospital's specialized capabilities or facilities if the hospital has the capacity to treat the individual. A hospital may not delay providing an appropriate medical screening examination or further medical examination to inquire about the individual's method of payment or insurance status.

A hospital may not penalize or take adverse action against (1) a qualified medical provider if the provider refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized; (2) a qualified medical provider if the provider's treatment of the patient is consistent with the medical standards of care that, in the provider's clinical judgement, were necessary to stabilize the patient; or (3) a hospital employee if the employee reports a violation of the bill.

Penalty Provisions

A hospital that negligently violates the bill's requirements is subject to a civil penalty of:

- for a hospital with 100 or more beds, up to \$50,000 for each violation; or
- for a hospital with fewer than 100 beds, up to \$25,000 for each violation.

A physician, including an on-call physician, who is responsible for the examination, treatment, or transfer of an individual and who negligently violates the bill is subject to a civil penalty of up to \$50,000 for each violation. If the physician, including an on-call physician, who is responsible for the examination, treatment, or transfer of an individual is found to be grossly negligent in violation of the bill or is found to have repeatedly violated the bill, the physician is subject to exclusion from participation in Medicaid.

In a civil action against a hospital for violation of the bill, an individual who incurs personal harm as a direct result of the violation may obtain damages available for personal injury and appropriate equitable relief. In a civil action against a hospital for a violation of the bill, a medical facility that incurs a financial loss as the result of the violation may obtain

damages for financial loss and appropriate equitable relief. A civil action must be filed within two years after the date the cause of action occurs.

Refusal to Participate or Refer

Except as otherwise provided, a licensed hospital, hospital director, or hospital governing board may not be required to *authorize* within the hospital, the performance of any medical procedure that results in artificial insemination, sterilization, or termination of pregnancy or to refer to any source for these medical procedures. The refusal to *authorize* or to refer to a source for these procedures may not be grounds for civil liability to another person or disciplinary or other recriminatory action against the person by the State or any other person.

Current Law: “Hospital” means an institution that (1) has a group of at least five physicians who are organized as medical staff for the institution; (2) maintains facilities to provide, under the supervision of medical staff, diagnostic and treatment services for two or more unrelated individuals; and (3) admits or retains the individuals for overnight care.

Chapters 285 and 286 of 2019 established the patient’s bill of rights to promote health, safety, and well-being of patients and to foster better communication between patients and health care providers. A hospital administrator must provide each patient (including inpatient, outpatient, and emergency services) with a written copy of the hospital’s patient’s bill of rights. The patient’s bill of rights must at a minimum include a statement that a patient, among other things, has a right to (1) receive considerate, respectful, and compassionate care; (2) be provided care in a safe environment free from all forms of abuse and neglect; (3) have a medical screening exam and be provided stabilizing treatment for emergency medical conditions and labor; and (4) be screened, assessed, and treated for pain.

Per § 19-701 of the Health-General Article, “emergency medical condition” means a medical condition, including a mental health condition or substance use disorder, that manifests itself by acute symptoms of such severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson, who possesses an average knowledge of health and medicine, to result in a condition described in an emergency medical condition as defined by the federal EMTALA. With respect to an emergency medical condition, “emergency services” means a medical screening examination that is within the capability of the ED of a hospital or freestanding medical facility, including ancillary services routinely available to the ED to evaluate an emergency medical condition.

Federal Emergency Medical Treatment and Labor Act

EMTALA was enacted in 1986 to ensure public access to emergency services regardless of the ability to pay. The Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening examination when a request is made for examination or treatment for an emergency medical condition, including active labor, regardless of an individual's ability to pay. Hospitals are then required to provide stabilizing treatment for patients with emergency medical conditions. If a hospital is unable to stabilize a patient within its capability, or if the patient requests, an appropriate transfer should be implemented.

In the case of a hospital that has an ED, if any individual (whether or not eligible for benefits) comes to the ED and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the ED, as specified. If any individual comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either (1) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition or (2) for transfer of the individual to another medical facility. A hospital may not delay an appropriate medical screening examination in order to inquire about the individual's method of payment or insurance status.

“Emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (1) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; (2) serious impairment to bodily functions; or (3) serious dysfunction of any bodily organ or part. With respect to a pregnant woman who is having contractions, “emergency medical condition” means (1) that there is inadequate time to effect a safe transfer to another hospital before delivery or (2) that transfer may pose a threat to the health or safety of the woman or the unborn child.

A hospital is deemed to meet the requirement to provide appropriate medical screening examination if the hospital offers the individual the further medical examination and treatment and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such 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 must take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment.

A hospital is deemed to meet the requirement to provide appropriate medical screening examination if the hospital offers to transfer the individual to another medical facility and

informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer, but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital must take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.

If an individual has an emergency medical condition that has not been stabilized, the hospital may not transfer the individual unless the transfer is appropriate transfer, and:

- the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations and of the risk of transfer, in writing requests transfer to another medical facility;
- a physician has signed a certification that based upon 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 and, in the case of labor, to the unborn child from effecting the transfer; or
- if a physician is not physically present in the ED at the time an individual is transferred, a qualified medical person has signed a certification after a physician, in consultation with the person, has made the determination, and subsequently countersigns the certification.

A certification must include a summary of the risks and benefits upon which the certification is based. An appropriate transfer to a medical facility is a transfer in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child, and 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 medical treatment. The transferring hospital must send to the receiving facility all medical records related to the emergency condition for which the individual has presented, available at the time of the transfer, including among other things, records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification.

A participating hospital that has specialized capabilities or facilities (such as burn units, shock trauma units, neonatal intensive care units, or regional referral centers as identified in regulation) must not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

A participating hospital that negligently violates EMTALA's requirements is subject to a civil money penalty of up to \$50,000 or, up to \$25,000 in the case of the hospital with less than 100 beds, for each violation. Any physician (including an on-call physician) who is responsible for the examination, treatment, or transfer of an individual in a participating hospital who negligently violates EMTALA's requirements is subject to a civil money penalty of up to \$50,000 for each violation; if the violation is gross and flagrant or is repeated, to exclusion from participation in Medicare and Medicaid.

Any individual who suffers personal harm as a direct result of a participating hospital's violation, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the state in which the hospital is located, and such equitable relief is appropriate. Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation may, in a civil action against the participating hospital, obtain those damages available for financial loss, under the law of the state in which the hospital is located, and such equitable relief as is appropriate. No action may be brought more than two years after the date of the violation.

Refusal to Participate or Refer

A licensed hospital, hospital director, or hospital governing board may not be required (1) to permit, within the hospital, the performance of any medical procedure that results in artificial insemination, sterilization, or termination of pregnancy or (2) to refer to any source for these medical procedures. The refusal to permit or to refer to a source for these procedures may not be grounds for civil liability to another person or disciplinary or other recriminatory action against the person by the State or any person.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 1175 of 2024.

Designated Cross File: None.

Information Source(s): Maryland Institute for Emergency Medical Services Systems; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

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km/jc

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