

ADVISORY OPINION

Kentucky Board of Emergency Medical Services

KBEMS 2015-001

August 18, 2015

Issues Presented:

- Does EMTALA require a referring hospital to provide appropriate medical staff (Physicians, Nurses, Respiratory Therapists, etc.) during an interfacility transfer of a patient requiring an advanced level of care, when only a “Basic Life Support” ambulance is available?
- Are Kentucky regulations on “minimum staffing guidelines” preempted by EMTALA in the case of an interfacility transfer to allow a medical provider who is not employed by the licensed ambulance agency to provide the highest level of care while on board the licensed ambulance?

Relevant Statutory Provisions: 42 U.S.C. § 1395dd; KRS § 311A.030.

Relevant Regulatory Provisions: 202 KAR 7:501.

Advisory Opinion:

42 U.S.C. § 1395dd(b)(1) requires that if any individual comes to a hospital with an emergency medical condition, the hospital must provide either medical examination and treatment within the hospital, or “transfer the individual to another medical facility in accordance with subsection (c) of this section.” Subsection (c)(2)(D) states that an appropriate transfer is one “in which 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...”

Federal courts have interpreted ‘qualified personnel’ to mean clinicians who are competent to treat complications that may develop as a result of a patient’s condition en route to a receiving

hospital. For example, in *Burditt v. U.S. Department of Health and Human Services*, the Fifth Circuit stated that while the obstetrical nurse and two emergency medical technicians who accompanied a pregnant patient in transit were qualified to deliver her baby in the absence of complications, “they were unqualified to perform a cesarean section or treat the other complications from [the patient’s] hypertension that could have developed.”¹ This analysis led to a finding that the transfer at issue in *Burditt* “violated the appropriate-transfer requirement of 42 U.S.C. § 1395dd(c)(1)(B).”

While 202 KAR 7:501 states that its minimum staffing requirements “shall not prevent a provider from utilizing staff other than that required by this administrative regulation in disasters; mass casualty incidents; or extraordinary scene conditions that would impair the safety of the patient or personnel operating at the scene”, the above-stated federal law preempts this potentially restrictive state regulatory provision.² In emergency situations in which appropriate hospital personnel deem a transfer necessary for the sake of the patient’s health, the hospital is required by federal law to ensure that the vehicle transporting the patient is appropriately staffed and equipped to handle any complications that may develop as a natural result of the patient’s condition(s), regardless of whether the vehicle is minimally staffed and equipped pursuant to Kentucky law and/or administrative regulation, and regardless of whether the patient is being transported in a disaster, mass casualty incident, or extraordinary scene condition. If the hospital needs to provide its own personnel to meet this federal requirement, such personnel should be allowed to accompany the patient during transport or appropriately equip the vehicle, despite the absence of employment or contract with the ambulance service in possession of the vehicle.

¹ *Burditt v. U.S. Department of Health and Human Services*, 934 F.2d 1362, 1373 (1991).

² U.S. Const. art. VI., § 2.