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September 2003

**U.S. Department of Health and Human Services
Publishes Final EMTALA Regulations**

By Elizabeth Christian, Esq.

On September 9, 2003, the U.S. Department of Health and Human Services (“HHS”) published notice of its adoption of a final rule which makes modifications to the regulations governing a hospital’s obligations under the Emergency Medical Treatment and Labor Act (“EMTALA”). The following represents a summary of these modifications:

- The regulations implement language in an earlier OIG Special Advisory Bulletin which specifies that a hospital may not delay providing an appropriate medical screening examination under EMTALA or further examination or treatment in order to inquire about an individual’s method of payment or insurance status. Hospitals may follow reasonable registration processes, including asking whether an individual is insured and, if so, what that insurance is, as long as that inquiry does not delay screening or treatment. In addition, the patient’s treating physician may be contacted at any time to seek advice regarding the individual’s medical history, as long as the consultation does not inappropriately delay services.
- The regulations include a new definition for a “dedicated emergency department.” A dedicated emergency department is defined as (i) any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that is licensed as an emergency room or emergency department; or (ii) is held out to the public as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or (iii) during the immediately preceding calendar year, 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. In the comments to the proposed regulations, HHS indicated that the definition was intended to encompass hospital urgent care centers operated under the

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hospital's license, as well as the labor and delivery and psychiatric departments of a hospital.

- The definition of the term “comes to the emergency department” has been revised to reference a patient who has either (i) presented at a hospital's dedicated emergency department and requested examination or treatment for a medical condition, or has had such a request made on his or her behalf; or (ii) has presented on hospital property other than the dedicated emergency department, and requests examination or treatment for what may be an emergency medical condition, or has had such a request made on his or her behalf. Thus, an individual who presents to a hospital's dedicated emergency department must receive a medical screening examination for any medical condition. In contrast, if a patient presents on hospital property other than a dedicated emergency department, a medical screening examination need only be provided if the patient requests examination or treatment for what may be an emergency medical condition. The regulations also provide that in the absence of a request for examination or treatment by or on behalf of an individual, a request 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. In the comments to the regulations, HHS indicated that if an individual affirmatively stated that he or she was not seeking emergency care, some brief questioning by qualified medical personnel of why the individual is there would be adequate to fulfill the EMTALA medical screening examination requirements.
- HHS has clarified that a hospital's EMTALA obligations end once the individual is admitted to the hospital for inpatient care. The proposed regulations had suggested that the hospital's EMTALA obligations would continue unless the emergency medical condition which led to the admission of the inpatient was stabilized.
- The regulations provide that the governing body of a hospital must assure that written policies and procedures are in effect with respect to off-campus departments and the protocols to be put in place for appraisals of emergencies and referrals for further treatment, where appropriate.
- The definition of the term “hospital property” has been revised to specify that hospital property is 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, RHC's, SNF's, or other entities that participate separately in Medicare, or restaurants, shops or other non-medical facilities.
- The regulations have been revised to specify that each hospital has the discretion to maintain its on-call list in a manner that best meets the needs of the hospital's patients in accordance with the resources available to the hospital, including the availability of on-

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call physicians. The regulations also require the hospital to have written policies and procedures in place which set forth how to respond to situations in which a particular specialty is not available. Hospitals will be required to provide that emergency services are available to meet the needs of patients with emergency medical conditions if the hospital 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 more than one hospital. Hospital policies may include, but are not limited to, procedures for backup on-call physicians, or the implementation of an appropriate EMTALA transfer. HHS made clear that there is no requirement that a hospital must have continuous uninterrupted on-call coverage in a specialty if there are at least three members of the medical staff who practice in that specialty area.

- A new paragraph has been added to the regulations specifying that sanctions under EMTALA for an inappropriate transfer during a national emergency (such as a bioterrorist attack) do not apply to a hospital with a dedicated emergency department located in an emergency area.
- The regulations specify that an individual is considered to have “come to the emergency department” if the individual is in a ground or air ambulance owned by the Hospital 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: (1) the ambulance is operated under community wide emergency medical service protocols that direct it to transport the individual to a hospital other than the hospital that owns the ambulance (such as the closest appropriate facility); or (2) the ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the hospital that owns an ambulance; or (3) the patient is in a ground or air ambulance which non-hospital operated and which is on hospital property.

Attorneys in the Health & Hospital Law practice area at GH&C are able to provide legal counsel as well as hospital staff training regarding the updated EMTALA requirements. If you have any questions, please do not hesitate to contact Elizabeth Christian at bchristian@ghclaw.com.

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