

# EMTALA: New Regulations For Hospital Emergency Department Policies And Procedures.

The US Centers for Medicare & Medicaid Services announced new regulations under the Emergency Medical Treatment and Active Labor Act (EMTALA) which take effect on November 10, 2003.

Every hospital which participates in Medicare and has an emergency department must comply with the new regulations with respect to the emergency treatment of all individuals, Medicare-eligible or not, as a condition of receiving Medicare reimbursement for any patient.

Nurses and other non-physician personnel who serve in front-line positions in hospital emergency departments bear a great deal of practical responsibility for whether their facilities do or do not comply with the EMTALA.

We have covered more than two dozen cases in this newsletter in the past few years involving nurses selected from more than two hundred EMTALA cases handed down by US courts.

Physicians and hospitals can be sued in civil court for violations of the EMTALA. Nurses and other non-physician personnel cannot be personally sued under EMTALA but their hospital employers can be sued for what they do or fail to do.

We will try to summarize here only the material in the new regulations that is both new and pertinent to nurses.

## **Admission Satisfies EMTALA**

A hospital has the option to satisfy its responsibilities under the EMTALA by screening an individual and then admitting the individual as an inpatient, provided the admission is done in good faith in order to stabilize the emergency medical condition that was found to exist.

## **Expanded Definition of Emergency Patient**

A person who has not come to the emergency room *per se*, who has begun to receive non-emergency inpatient or outpatient care, who then develops what a reasonably prudent layperson would interpret as an emergency medical condition, is entitled to be examined and treated as an emergency patient under the EMTALA.

***New US Centers for Medicare & Medicaid Services regulations take effect November 10, 2003 clarifying the responsibilities of Medicare-participating hospitals in treating individuals with emergency medical conditions.***

***We have placed the full forty-four page text of the announcement from the September 9, 2003 Federal Register on our website at <http://www.nursinglaw.com/emtalaregs.pdf>***

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## **Refusal of Consent to Treatment Documentation**

A hospital meets the requirements of the new regulations if the hospital offers an emergency patient an appropriate screening examination and stabilizing treatment and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) does not consent to the examination or treatment.

The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual.

The hospital must take all reasonable steps to secure the individual's written informed refusal of treatment (or that of the person acting on his or her behalf). The written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.

## **Delay in Examination or Treatment Insurance Status**

A hospital may not delay an appropriate medical screening examination or further medical examination and treatment in order to inquire about the individual's method of payment or insurance status.

A hospital may not seek, or direct an individual to seek, authorization from the individual's insurance company for screening or stabilization services to be furnished by a hospital, physician, or non-physician practitioner until after the hospital has provided the individual with the required appropriate medical screening examination and initiated any further medical examination and treatment that may be required to stabilize the individual's emergency medical condition.

## **Delay in Examination or Treatment Prior Medical History**

An emergency physician or non-physician practitioner is not precluded from contacting the individual's physician at any time to seek advice regarding the individual's medical history and needs that may be relevant to the medical treatment and screening of the patient, as long as this consultation does not inappropriately delay required services.

## **Delay in Examination or Treatment Registration Process**

Hospitals may follow reasonable registration processes for individuals for whom examination or treatment is required by this section, including asking whether an individual is insured and, if so, what that insurance is, as long as it does not delay screening or treatment.

Reasonable registration processes may not unduly discourage individuals from remaining for further evaluation.

*(Editor's Note: A November 10, 1999 Special Advisory Bulletin from the HCFA Office of Inspector General dealt extensively with the topics above, but, strictly speaking, only now are there mandatory Federal regulations here.)*

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