Emergency Care Systems Facing Critical Workforce Shortages

by Kathleen Ream, Director of Government Affairs

According to a new study by the Center for Health Workforce Studies (CHWS) at the University at Albany's School of Public Health, emergency care systems in the United States are at serious risk of critical shortages in staffing in the near future. The three key reasons are: an inadequate supply of board certified emergency medicine physicians, the worsening shortages of RNs, and difficulty recruiting and retaining EMTs in rural areas. Meanwhile, the future demand for emergency care services and workers is expected to increase due to issues such as: the potential for bioterrorism or other mass casualty incidents, the aging population and the growing number of uninsured.

The study, entitled *The Emergency Care Workforce in the U.S.*, covered pre-hospital emergency services, EDs in hospitals, freestanding urgent care centers and teams dispatched by local, state or federal governments or volunteer organizations in response to a widespread emergency or disaster. Among the study's key findings are:

- The supply of board certified emergency medicine physicians may not be adequate to meet demand. Nearly 20% of physicians specializing in emergency medicine are working as independent contractors, compared to 4% of all physicians.
- Emergency care services are currently affected by the shortage of RNs. EDs are one of the most common locations for RN openings at hospitals, and this situation will persist as RN shortages worsen.
- The composition of the emergency care workforce varies significantly between rural and urban areas, with fewer emergency medicine physicians in rural areas and fewer ED RNs and physician assistants in urban areas.
- While EMTs are not generally seen as in short supply, the high rate of turnover in rural areas makes the recruitment and retention of EMTs in these areas a continuing concern.

The study can be viewed at www.albany.edu/news/pdf_files/EmergencyCare%20Workforce%20in%20the%20US%2008 2006A.pdf

Federal Court Finds CMS Report Admissible for EMTALA Case

On August 14, 2006, the U.S. District Court for the Middle District of Alabama ruled on a defendant's motion to strike evidence submitted by a plaintiff in opposition to a pending motion for summary judgment. The case involved plaintiff Ginger Henderson who brought suit against Medical Center Enterprise (MCE) (Henderson v. Medical Center Enterprise, M.D. Ala., No. 1:05 cv 823 MEF, 8/14/06).

During the afternoon of November 30, 2004, Henderson was involved in an automobile accident. A few hours later, Henderson, who was approximately 38 weeks pregnant, presented at MCE's ED. Allegedly, the ED clerk told Henderson that the clerk would need to contact the on call obstetrician, who then would decide whether or not Henderson would be seen. Henderson decided not to wait and instead traveled to another hospital, where she was seen and admitted for observation.

Henderson claimed a violation of the Emergency Treatment and Active Labor Act (EMTALA). In response to MCE's motion for summary judgment, Henderson submitted a report of an investigative survey of MCE from the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services. The CMS investigation found that MCE's treatment of the plaintiff violated federal regulations, concluding that defendant's Medicare certification would be terminated absent correction of the deficiencies. MCE moved to strike the CMS investigation from the record, believing the "information is inadmissible pursuant to the Federal Rules of Evidence 803(8)(C)." MCE argued that the CMS survey did not fall under Rule 803(8) because it was never made public, and as such, was not a public record. The federal court determined that MCE cited no authority, and the court could find none requiring that information be made public in order for it to qualify as a public record. Thus, the fact that the information "is contained in the records of a public agency, namely Department of Health and Human Services, is sufficient in this case," ruled the court.

MCE further argued that the CMS record does not fall under Rule 803(8) because it lacks trustworthiness owing to the fact that "the citation and action to terminate MCE's Medicare certification were later withdrawn." The court noted that withdrawal of the citation and termination of the action were due to actions that had been taken "to correct the deficiencies that were cited"; and that having been made gave reasonable assurance that a similar violation would not recur. Ergo, reasoned the court, the withdrawal "does not mean that the findings of deficiencies in the earlier report were inaccurate, it simply means that CMS was satisfied that the deficiencies had been sufficiently addressed . . . and the Court does not have any reason to believe that the factual findings set forth in the survey are untrustworthy."

The district court did agree, in part, with MCE's contention that the information should be precluded from admission because it offers legal conclusions. The court found that the portion of the CMS report asserting that MCE violated certain federal regulations in its treatment of Henderson would not be admissible as evidence in this case but that those legal conclusions would not prohibit the court from considering any factual findings made during the CMS investigation. The court also concurred with the defendant that "references to subsequent remedial measures as evidence of culpable conduct by MCE" are inadmissible pursuant to Rule 407.

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In concluding, however, the federal court determined that the CMS information was not prejudicial or confusing, pursuant to Rule 403, and thus was admissible. And too, even though the citation and termination action ultimately were withdrawn, the court ruled that "the fact of the withdrawal has no effect on the admissibility of the [CMS] information."

For a closer reading of the court decision, see <http://op.bna.com/hl.nsf/r?Open=psts 6sypjt>.

EMTALA Prohibits Different Treatment of Patients with Same Symptoms

The U.S. District Court of the Eastern District of Missouri granted, on August 7, 2006, a motion for summary judgment in the case of Robert Irvin, Sr. and Nancy Irvin, the parents of decedent Delia White, who filed suit under EMTALA against Pike County Memorial Hospital (PCMH). In granting defendant's motion, the court dismissed plaintiff's claim that PCMH did not provide adequate medical screening of their daughter (Irvin v. Pike County Memorial Hospital, E.D. Mo., No. 2:05CV00014, 8/7/06).
The decedent arrived at PCMH's ED at 10:20 p.m. on February 17, 2004, complaining of a headache with vomiting, which had begun three days prior. Decedent was not known to PCMH employee and ED director, Phillip Pitney, MD, who examined and discharged decedent within approximately two hours and after her headache had diminished. Pitney gave her standard migraine medications and instructed her to follow-up with her physician and to obtain a CT scan the next morning. The decedent died the next day of acute hydrocephalus. The plaintiffs held that there exist genuine issues of material fact as to whether PCMH provided appropriate medical screening to decedent. Defendant moved for summary judgment on all claims against it.

Pitney's deposition included testimony that based on decedent's complaints and history, which included a history of migraines; Pitney thought that decedent had "a recurrent common migraine headache." He supported his opinion with data gathered from blood work, decedent's vital signs and the results of a physical exam he performed. Since all the data were normal, and there was no change in decedent's past headache pattern, Pitney did not order other diagnostic tests and/or a neurological consultation or consultation with decedent's physician.

The court reviewed the conditions for granting summary judgment, which include that the evidence must be viewed in the light most favorable to the non moving party and that there must be no dispute of material fact. In applying the test for defendant's motion to this case, the federal court examined the operative language of EMTALA, which states that:

- A hospital such as PCMH "must provide for an appropriate medical screening exam within the capability of the hospital's emergency department . . . to determine whether or not an emergency medical condition . . . exists"; and that
- The purpose of EMTALA was "to address a distinct and rather narrow problem - the 'dumping' of uninsured, underinsured or indigent patients by hospitals who did not want to treat them."

The court ruled that EMTALA does not guarantee correct or non-negligent treatment in all circumstances. Rather, EMTALA only guarantees that there will not be any bias in treatment, to the extent that each patient is to be treated as other similarly situated patients are treated, within the hospital's capabilities. Drawing on the precedent of previous courts' EMTALA interpretations, this federal court wrote that "a plaintiff need not prove an improper motive on the part of the hospital to 'dump' the patient, but . . . that the 'appropriate medical screening examination' provision is only violated by disparate treatment of a patient . . . It is up to the hospital itself to determine what its screening procedures will be. Having done so, it must apply them alike to all patients."

Finding evidence that Pitney treated the decedent the same as he would any other patient presenting in the same fashion, and that plaintiffs had not alleged or presented any evidence that decedent was treated differently from any other patient under similar circumstances, the court ordered that the motion of PCMH for summary judgment on plaintiffs' complaint is granted.

You may examine the court's decision at <http://op.bna.com/hl.nsf/r?Open=psts 6shnwy>.

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