

## **EMERGENCY ROOM CLOSURES DURING A DISASTER**

**Prepared By: Office of General Counsel, Texas Department of State Health Services  
April 26, 2006**

**ISSUE: Are private hospital emergency rooms required to stay open and treat patients during an emergency or disaster? Does DSHS or the State have the authority to require them to remain open and treat patients?**

**ANSWER:** Answer to both questions is no.

**DISCUSSION:** Private hospitals licensed by the state that participate in Medicare are required by federal law to ensure access to emergency services to every person who presents at the hospital with an emergency medical condition *See* Emergency Medical Treatment & Labor Act (EMTALA), 42 USC 1395dd. If the hospital is open, it must screen, treat, stabilize, and/or transfer any and all patients who present at the ER. However, if the hospital is closed due to evacuation orders, unsafe conditions, or other disaster situations, this section does not apply. 42 USC 1395dd(1) and 42 CFR 489.24(a)(1) and (2). The State has no authority to order the hospital to remain open if the hospital administrator or hospital district has made a decision to close the facility based on evacuation orders, unsafe conditions, or other disaster situations. The Governor may exercise his authority under the Texas Disaster Act of 1975, (Act) Government Code, ch. 418, Sec. 418.017, to commandeer and use private property if the Governor finds it necessary to cope with a disaster, subject to the compensation requirements of the Act. This provision does not mandate the use of the employees or contractors of the private resource.

**WAIVER OF LAW OR RULES:** Not applicable.

**CONTACT:** Marc Allen Connelly, Assistant General Counsel  
512-458-7111X6683, Room M-531