WASHINGTON
LEGISLATIVE OFFICE

July 1, 2010

By Fax and First Class Mail
Marilyn Tavenner
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and Chief Operating Officer
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Re: Denial of Reproductive Health Care at Religious Hospitals

Dear Ms. Tavenner:

We write to inform you about potential violations of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, and the Conditions of Participation of Medicare and Medicaid (COP), 42 C.F.R. § 482.13, by religious hospitals that refuse to provide emergency reproductive health care. Religiously affiliated hospitals are not exempt from complying with these laws, and cannot invoke their religious status to jeopardize the health and lives of pregnant women seeking medical care. To the contrary, the federal laws mentioned above protect patients' right to receive emergency reproductive health care. The government unquestionably has a significant interest in ensuring that these laws are enforced in order to protect women's lives and their health. We therefore ask you to not only investigate the matters discussed herein and take appropriate action under the above-mentioned laws, but that you also clarify in the appropriate CMS program manual, and issue a transmittal, that denying emergency reproductive health care violates federal law.

Religiously affiliated hospitals across the country inappropriately and unlawfully deny pregnant women emergency medical care. This issue was recently highlighted by a situation in Phoenix, Arizona, where St. Joseph's Hospital and Medical Center, a Catholic-owned hospital, provided a life-saving abortion to a young mother of four in November 2009. The woman was eleven weeks pregnant and suffered from life-threatening pulmonary hypertension, which is high blood pressure in the arteries that supply blood to the lungs. As her condition worsened, the hospital diagnosed her with right-sided heart failure and cardiogenic shock, and determined that she would almost certainly die unless she terminated the pregnancy. The hospital's Ethics Committee deliberated the issue, and determined that if the

woman wanted to terminate the pregnancy to save her life, her physicians would be permitted to do so under the Ethical and Religious Directives under which Catholic hospitals operate. The woman decided to terminate the pregnancy, and an abortion was performed.

Sister Margaret Mary McBride was the liaison between the Ethics Committee and the physicians who were treating the pregnant woman. Sister McBride, a nurse with more than thirty years experience in health care administration, was demoted because of her role in facilitating the abortion. And the Roman Catholic Diocese of Phoenix, which oversees St. Joseph's, denounced the abortion and issued a statement explaining that abortion is never allowed in Catholic health facilities, even to save the life of the woman. Accordingly, although the hospital provided the life-saving care that the patient needed, in accordance with medical ethics, the COP, and EMTALA, Sister McBride's subsequent treatment and the diocese's unambiguous statement sends the message to other hospital employees, at St. Joseph's and at other Catholic hospitals around the country, that they risk punishment if they provide life-saving pregnancy terminations in the future.

Unfortunately, there are a number of conditions that can arise during pregnancy, or that can be exacerbated by pregnancy, that require an abortion to save the woman's life. For example, a pregnant woman can develop preeclampsia and eclampsia, which are serious conditions that are responsible for 17% of the maternal deaths in the U.S. Short of death, these conditions can cause serious, long-term health problems including renal failure. The only way to treat preeclampsia and eclampsia is delivery of the pregnancy or, before the pregnancy is viable, an abortion. Moreover, pregnant women can face premature rupture of membranes (PROM), which occurs when the amniotic membranes surrounding a pregnancy rupture before the pregnancy has reached term. Complications from PROM include severe bleeding and severe infection, including a type of infection called chrorioamnionitis, which is an infection of the placental lining. If the woman develops sepsis – an infection of all major organ systems – she could die. In addition, a pregnancy can develop outside the uterus, usually in the fallopian tubes; this is called an ectopic pregnancy, and it may lead to serious heath consequences including future infertility and death.

Women with these types of conditions – like the woman at St. Joseph's – are often admitted to hospitals that are Catholic-owned in need of emergency services. Catholic hospitals operate 15% of the hospital beds in the country, and are often the only hospital in a particular community, and therefore the only place where a woman can obtain care. As a result, many pregnant women who seek emergency reproductive health care in Catholic hospitals do not share the religious beliefs of the hospital, and may not receive appropriate medical care. These circumstances have been documented in a recent article in the American Journal of Public Health. *See* Lori R. Freedman, et al., *Where There's a Heartbeat: Miscarriage Management in Catholic-Owned Hospitals*, 98 Am. J. of Public Health 1774 (Oct. 2008).

The refusal to provide timely reproductive health care to pregnant women seriously threatens their health and lives. For example:

- A doctor in the Northeast decided to leave a Catholic-owned hospital after he was forced by the ethics committee to risk a pregnant patient's life. The woman was

in the process of miscarrying at 19 weeks of pregnancy. She was dying: her temperature was 106 degrees, she had disseminated intravascular coagulopathy, which is a life-threatening condition that prevents a person's blood from clotting normally and causes excessive bleeding. This patient was bleeding so badly that the sclera, the whites of her eyes, were red, filled with blood. *Id*. at 1777. Despite the fact that there was no chance the fetus could survive, the ethics committee told the doctor that he could not perform the abortion the woman needed to save her life until the fetus's heartbeat stopped. The patient was in the Intensive Care Unit for ten days, and developed pulmonary disease, resulting in lifetime oxygen dependency.

- One doctor in a Western urban area described how a Catholic-owned hospital asked her hospital to accept the transfer of a pregnant patient who was in the midst of miscarrying and needed emergency care because she was septic and hemorrhaging. The patient needed the pregnancy to be terminated to prevent further risk to her health, which the Catholic hospital refused to allow the doctor to do, even though transporting her while she was unstable created additional risks to her health. *Id*. at 1776.

- In another situation, a doctor working at a Catholic-owned hospital in the Midwest was forced to send her patient, who was 14 weeks pregnant, 90 miles by ambulance to another hospital to treat a miscarriage already in progress – the patient's membranes had already ruptured and her health was at risk. *Id*.

As these examples illustrate, there are a number of Catholic-owned hospitals that fail to provide proper care to patients in violation of the COP and EMTALA. EMTALA requires hospitals that participate in Medicare and Medicaid to treat patients in emergencies and active labor. EMTALA requires hospitals to stabilize or transfer patients who are facing an emergency; however, a hospital cannot transfer a patient until she is stable. 42 U.S.C. § 1395dd (b) and (c). An emergency medical condition is one that, absent proper treatment, places the health of the patient in serious jeopardy, risks serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. *Id*. at (e)(1). Clearly, the women described above were facing medical emergencies that placed their health, and lives, in jeopardy. If stabilizing the patient means terminating the pregnancy, as it will for many of these cases, then the hospital must do so. There is no basis for a hospital to impose its own religious criteria on a patient to deny her emergency medical care.

The denial of appropriate reproductive health care also violates the COP regulations, which require hospitals that participate in Medicare and Medicaid to inform patients' of their rights in advance of furnishing or discontinuing care. 42 C.F.R. § 482.13(a)(1). Moreover, under the COP, patients have the right to participate in the development of their plan of care; they have the right to make informed decisions regarding their care; and they have the right to request or refuse treatment. *Id*. at § 482.13(b)(1) & (2). The hospitals discussed in the instances above did not comply with the COP. To the contrary, they failed to inform or offer their pregnant patients, and their families, treatment options that could protect their health and lives. Indeed, under the COP, physicians must clearly communicate all pregnancy and miscarriage

management options to women and their families, and women must have the ability to request a certain course of treatment.

We ask that you investigate these situations, provide technical assistance where appropriate, and take any measures to fully enforce EMTALA and the COP. Moreover, we ask that you clarify in the appropriate CMS program manual, and issue a transmittal, that denial of emergency reproductive health care violates EMTALA and the COP.

We would also like the opportunity to meet with you to discuss the matter further. We will be in touch in the coming days to schedule an in-person meeting. Thank you for your time and attention to this matter.

Sincerely,

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cc: Arizona Department of Health Services
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