

prohibited by EMTALA, and that making such contacts therefore could expose the hospital or the emergency physician to sanctions.

*Response:* We agree that physician communication regarding patient medical status and information is essential. We expect the regulations will dispel any possible concerns about the appropriateness of this communication. Therefore, we do not believe it is necessary to make any change in the regulations in this final rule based on this comment.

*Comment:* Two commenters stated that the proposed language regarding contact with the patient's physician not being prohibited as long as the consultation does not inappropriately delay EMTALA-mandated screening or stabilization is unclear, and recommended that it be revised to state that such contact is not inappropriate as long as it does not otherwise delay the start of the medical screening examination.

*Response:* We do not believe the language as proposed is less clear than the commenters' recommended alternative. The commenters' alternative could suggest instead that delays in stabilizing treatment would be acceptable. Therefore, we are not adopting the recommendation of the commenters.

*Comment:* One commenter suggested that CMS clarify the proposed regulatory language by citing lists of appropriate referral physicians or participating providers as examples of the types of information that may appropriately be obtained as long as prior authorization is not sought.

*Response:* We agree that it would not be inappropriate to discuss the types of information the commenter cited with the patient's attending physician. However, we do not believe these types of information are representative samples of the types of information that such contacts should elicit. Therefore, we are not making any change in the final rule based on this comment.

## 5. Out-of Network Coverage

*Comment:* Some commenters stated that they understood the need to avoid delaying EMTALA screening or stabilization to obtain prior authorization, but suggested that, if such authorization is not obtained, patients might be left with substantial financial responsibility. The commenters noted that individuals may request information about the costs of services while awaiting a screening examination. They stated that, while it is important to avoid even the appearance of coercion of an individual to leave the

emergency department, it is also important to recognize the patient's right to be informed of potential financial liability for services (including increased liability for out-of-network services) before, rather than after, the services are furnished. These commenters recommended that the regulations be revised to state that a hospital may request financial or coverage information as long as doing so does not delay screening or stabilization. The commenters also recommended that we state that there may be discussion of the limits of an individual's health insurance coverage if the individual asks about the charges for the emergency department visit.

*Response:* As noted in the Special Advisory Bulletin cited earlier (64 FR 61355), current Interpretive Guidelines indicate that hospitals may continue to follow reasonable registration processes for individuals presenting with an emergency medical condition. Reasonable registration processes may include asking whether an individual is insured and, if so, what that insurance is, as long as that inquiry does not delay screening or treatment. Reasonable registration processes should not unduly discourage individuals from remaining for further evaluation. As requested by the commenter, in this final rule, we are revising proposed § 489.24(d)(4) by adding a new paragraph (iv) to clarify this policy. To avoid any misunderstanding of the requirement, we have revised the language of the interpretative guidelines to state that reasonable registration processes must not unduly discourage individuals from remaining for further evaluation.

Regarding a hospital's response to an individual's inquiry about financial liability for emergency services, the Special Advisory Bulletin states that any such inquiry should be answered by a staff member who is well-trained and knowledgeable and that the staff member should explain to the individual that, regardless of the individual's ability to pay, the hospital stands ready and willing to provide any necessary screening or stabilization services or both. Staff should encourage the individual to defer further discussion of financial responsibility issues, if possible, until after any necessary screening has been performed. We do not believe that this explanation needs to be included in the regulations.

*Comment:* One commenter suggested that, in the interest of avoiding any appearance that an individual's screening or stabilization may have been influenced by the individual's perceived

ability or inability to pay, financial information collected by registration or billing staff should not be included in the patient chart that goes back to the clinical staff who are caring for the individual.

*Response:* We agree that such a procedure could help avoid the perception of improper financially based influences on screening or treatment decisions. We do not believe it is necessary to revise the final rule to require that such information be excluded from the patient's chart.

## C. Provisions of the Final Rule on Prior Authorizations

In summary, we are adopting the proposed changes relating to prior authorization for necessary stabilizing treatment for emergency medical conditions under § 489.24(d)(4) as final, with the following modification:

We are revising paragraph (d)(4)(ii) to indicate that prior authorization policies apply to services furnished by a hospital, a physician, or a nonphysician practitioner.

We are revising paragraph (d)(4)(iii) to specify that an emergency physician as well as any nonphysician practitioner involved in the emergency treatment is not precluded from contacting the individual's physician at any time to seek advice regarding the individual's medical history as long as the consultation does not delay screening and stabilizing services.

We are adding a new paragraph (d)(4)(iv) to specify that hospitals may follow reasonable registration processes for individuals for whom examination or treatment is required under EMTALA, as long as the procedures do not result in a delay in screening or treatment.

## VI. Clarification of "Comes to the Emergency Department" (§ 489.24(a) and (b))

### A. Background

Section 1867(a) of the Act and our existing regulations at § 489.24(a) provide, in part, that if any individual comes to the emergency department of a hospital and a request is made on that individual's behalf for examination or treatment of a medical condition, the hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department. Section 1867(b) of the Act and our existing regulations at § 489.24(c) provide, in part, that if the hospital determines that such an individual has an emergency medical condition, the hospital is further obligated to provide either necessary