

stabilizing treatment or an appropriate transfer. Occasionally, questions have arisen as to whether these EMTALA requirements apply to situations in which an individual comes to a hospital, but does not present to the hospital's emergency department.

B. Provisions of the Proposed Rule

In the May 9, 2002 proposed rule (67 FR 31472), we proposed to consolidate the EMTALA requirements for screening (currently in § 489.24(a)) and for stabilization or appropriate transfer (currently in § 489.24(c)) into a single revised paragraph (a). This consolidation was not intended to change the substance of the requirements, but only to set forth more concisely, in a single opening paragraph, the essential requirements of EMTALA. In proposed paragraph (b), we proposed to clarify the criteria for determining under what conditions a hospital is obligated by EMTALA to screen and, if necessary, stabilize or transfer an individual who comes to a hospital, presenting either at its dedicated emergency department, as we proposed to define, or elsewhere on hospital property, and requests examination or treatment, or has such a request made on his or her behalf.

In developing the proposed criteria, we recognized that sometimes individuals come to hospitals seeking examination or treatment for medical conditions that could be emergency medical conditions, but present for examination or treatment at areas of the hospital other than the emergency department. In recognition of this possibility, and for other reasons explained in the preamble to the proposed rule (including the need to assure that an individual is not denied services simply because he or she failed to actually enter the hospital's designated emergency department), we proposed to clarify under proposed § 489.24(b) that an individual can "come to the emergency department," creating an EMTALA obligation on the part of the hospital, in one of two ways: The individual can present at a hospital's dedicated emergency department (as we proposed to define that term) and request examination or treatment for a medical condition; or the individual can present elsewhere on hospital property in an attempt to gain access to the hospital for emergency care (that is, at a location that is on hospital property but is not part of a dedicated emergency department), and request examination or treatment for what they believe to be an emergency medical condition.

Because of the need to clarify the applicability of EMTALA to a particular individual depending on where he or she presents on hospital property in order to obtain emergency care, we proposed to define "dedicated emergency department." We proposed that "dedicated emergency department" would mean a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions, as defined in § 489.24(b), and is either located: (1) on the main hospital campus; or (2) off the main hospital campus and is treated by Medicare under § 413.65(b) as a department of the hospital.

The EMTALA statute was intended to apply to individuals presenting to a hospital for emergency care services. Accordingly, we believe it is irrelevant whether the dedicated emergency department is located on or off the hospital main campus, as long as the individual is presenting to "a hospital" for those services. Therefore, we proposed in our definition of "dedicated emergency department" that such a department may be located on the main hospital campus, or it may be a department of the hospital located off the main campus. (We note that the proposed definition would encompass not only what is generally thought of as a hospital's "emergency room" but would also include other departments of hospitals, such as labor and delivery departments and psychiatric units of hospitals, if these departments provide emergency psychiatric or labor and delivery services, or both, or other departments that are held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis.)

In the May 9, 2002 proposed rule, we solicited public comments on whether this proposed definition should more explicitly define what is a "dedicated emergency department" (67 FR 31472). Specifically, we sought comments on whether a "significant portion of time" should be defined more objectively; for example, in terms of some minimum number or minimum percent of patients (20, 30, 40 percent or more of all patients seen) presenting for emergency care at a particular area of the hospital in order for it to qualify as a dedicated emergency department. As an alternative, we proposed considering a qualifying criterion that is based on determining whether the facility is used "regularly" for the evaluation or treatment of emergency medical conditions, and how we could define "regularly." We further sought

comments from hospitals, physicians, and others on how hospitals currently organize themselves to react to situations in which individuals come to a hospital requesting a screening examination or medical treatment, or both.

C. Summary of Public Comments and Departmental Responses

1. General Support

Comment: Many commenters supported our proposed revised definition of "dedicated emergency department." The commenters believed the proposed revised definition is clear and did not need to be further revised.

Response: We appreciate the support of the commenters and have taken their views into account in considering the comments of those respondents who recommended revisions.

2. Objective Test of "Significant Portion of the Time"

Comment: Some commenters believed that an objective test (such as a percentage of emergency patients seen or treated for emergency medical conditions) to determine dedicated emergency department status would reduce confusion in the provider industry. Several other commenters stated that while a finite, objective test, such as a standard of 20, 30, 40 percent or more of all patients seen, would be desirable because of the certainty and consistency it would provide in determining a "significant portion of the time" for purposes of "dedicated emergency department" determination, the commenters believed the percentages cited by us are too low.

One commenter asked us to clarify what is meant by patients who "seek emergency care" in our discussion of whether "significant portion of the time" should be defined more objectively. For instance, the commenter stated the view that while many patients present for immediate care of nonemergency problems (and these patients must be screened for an emergency under EMTALA regulations), they should not be counted in determining whether a department is considered a dedicated emergency department.

Response: After consideration of these comments and the following related comments in this section VII.C. of this preamble, we believe that providing an objective criterion as part of the definition of "dedicated emergency department" for purposes of EMTALA will provide predictability and consistency to the health care industry, as the commenters suggest. Therefore, as