

3. Nature of Care

Comment: Some commenters believed that the amount of time a facility is used for emergency screening and treatment is not relevant, and that it is the “nature of the care provided” that distinguishes it as a dedicated emergency department.

Response: We appreciate the comment concerning the “nature of the care provided” as determinative of meeting the definition of “dedicated emergency department” rather than the amount of time a facility is used for emergency screening and treatment. However, if we used the suggested language of “nature of the care provided” as the standard for determining “dedicated emergency department” status, we believe that treatment for one emergency case by one hospital clinic would meet the suggested standard. We believe that the suggested standard is too general in its reach and would encompass too many departments of hospitals. Therefore, we are not adopting the commenters’ proposed language.

4. State Law Criterion

Comment: Several commenters suggested that “dedicated emergency department” status should be determined by State law in the State in which the hospital is located. Another commenter suggested that we define “dedicated emergency department” as any facility licensed by the State in which it is situated as an emergency department. The commenter stated that this would avoid the confusion as to whether urgent care or walk-in clinics do or do not devote a “significant portion of time” to the provision of emergency services.

Response: As explained under section VII.D. of this preamble, based on consideration of all of the comments received, in this final rule we are revising the proposed definition of “dedicated emergency department” to state that a facility licensed by the State as an emergency department will be recognized as such under Federal EMTALA rules. However, because of the variations in State licensure laws, we do not agree that *only* facilities that are licensed as emergency departments by the State should be considered dedicated emergency departments for purposes of EMTALA, and have therefore included other criteria for dedicated emergency department status, as specified in this final rule.

5. Held Out to the Public Standard

Comment: Many commenters agreed with statements in the preamble of the proposed rule to the effect that a “held

out to the public standard” is appropriate for determining “dedicated emergency department” status. One commenter specifically suggested that a “dedicated emergency department” should be defined as “the department of a hospital that is held out to the public as the appropriate place to go for the examination and treatment of emergency medical conditions as defined in this section.”

Similarly, another commenter stated that a “24/7” rule with routine emergency care may be more appropriate to designating a “dedicated emergency department” rather than our proposal of tracking patients and developing some minimum percentage of emergency patients. The commenter stated that if the area is not open and staffed on a continuous basis, and it is not held out to the public as such, then it should *not* be considered a dedicated emergency department.

Response: As explained in section VI.D. of this preamble, we are revising the proposed definition of “dedicated emergency department” in several areas. In the revised definition of dedicated emergency department that we are adopting in this final rule, we state that a department or facility that is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment will be considered to be a dedicated emergency department. Consistent with what we have stated above, we believe that most provider-based urgent care centers that are held out to the public as such will meet the revised definition of dedicated emergency department for purposes of EMTALA.

6. Labor and Delivery Departments and Psychiatric Units

Comment: Several commenters addressed our clarification in the preamble of the proposed rule at 67 FR 31472 that other types of hospital departments, such as labor and delivery and psychiatric units, could qualify as a dedicated emergency department for purposes of EMTALA under our proposed definition.

One commenter stated that if a hospital has a department held out to the public as the place to go for a labor or psychiatric emergency medical condition, that department should fall under the definition of “dedicated emergency department” for purposes of EMTALA.

Two commenters stated that it was unclear which of the EMTALA requirements (such as the EMTALA log)

would apply to the labor and delivery unit and the psychiatric unit that meet the definition of “dedicated emergency department.” In addition, these commenters asked whether EMTALA would apply to all patients who present to these locations or only to obstetrical and psychiatric patients who present under orders of their physicians at the locations.

Response: As explained further below, under the revised definition in this final rule, departments of the hospital will be considered to be “dedicated emergency departments” if they are held out to the public as places that provide care for emergency medical conditions on an urgent, nonappointment basis. These departments will be subject to EMTALA requirements applicable to dedicated emergency departments, including requirements related to maintenance of an emergency department log and on-call requirements. Individuals who present at these locations and request examination or treatment for a medical condition or have such a request made on their behalf must be screened under EMTALA and, if an emergency medical condition is determined to exist, provided necessary stabilizing treatment, because these locations are dedicated emergency departments.

We note that the dedicated emergency department to which an individual presents does not necessarily have to be the one to do EMTALA screening and stabilization. For example, if a man with cold symptoms or another medical condition were to seek treatment in the obstetrics and gynecology department rather than the general emergency department, this presentation would create an EMTALA obligation for the hospital, but the hospital would not be prohibited from transporting the individual to its general emergency department for screening and stabilization if that action were medically indicated.

7. Use of Arizona State Bill Language Defining Freestanding Urgent Care Center

Comment: One commenter cited language of a State bill (Arizona SB1098 (1999)) that, if enacted, would amend the Arizona State statutes to create standards in Arizona for “freestanding urgent care centers.” The commenter suggested that we adopt the legislative language for a “freestanding urgent care center” as the Medicare definition of “dedicated emergency department.” Specifically, the commenter suggested that the definition state:

An “emergency department” means a medical facility that, regardless of its