

posted or advertised name, meets the following requirements:

(a) Is a department of a hospital and is intended to routinely provide unscheduled medical services; or

(b) Meets any one of the following requirements:

(1) Is open 24 hours a day to provide unscheduled medical care, excluding, at its option, weekends or certain holidays;

(2) By its posted or advertised name, give the impression to the public that it provides medical care for urgent, immediate or emergency conditions; or

(3) Routinely provides ongoing unscheduled medical services for more than 8 consecutive hours for an individual patient.

Response: We have considered this suggested Arizona bill language defining urgent care centers for the State and believe it has merits for further revision of the CMS definition of “dedicated emergency department,” with some modification.

Under subparagraph (2) of the revised definition in this final rule, we are adopting as one of three options that a “dedicated emergency department” may be any department or facility of a hospital, regardless of whether it is located on or off the main hospital campus, that is held out to the public as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We have not limited the definition to a hospital “department” because we do not believe it would be appropriate to exclude facilities that otherwise function as dedicated emergency departments from that definition solely because they may not fully meet the requirements for departments of providers in 42 CFR 413.65.

Second, under subparagraph (3) of the revised definition in this final rule, we are adopting the criterion that during the calendar year immediately preceding the calendar year in which a determination is being made, based on a representative sample of patient visits that occurred during that calendar year, the department or facility provided at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We are not using the Arizona bill 24-hour or 8-hour requirements because we believe an objective measure based on outpatient visits for the treatment of emergency medical conditions will be easier to understand and implement and better reflects the operating patterns of some emergency departments, including those at small or rural hospitals, or both, that

may not offer treatment for emergency medical conditions continuously on a 24-hour, 7 days a week basis. (The hospital CoPs governing emergency services of hospitals (§ 482.55) and CAHs (§ 485.618) do not require that emergency departments be operated continuously. Under some circumstances, such as local shortages of emergency care personnel or limited demand for emergency services, hospitals and CAHs may choose to open and staff their emergency departments on less than a 24-hour, 7 days a week basis.)

8. Urgent Care Centers

Comment: Many commenters were concerned that hospital “urgent care centers” or “acute care centers” would be included, inappropriately, as “dedicated emergency departments” for purposes of EMTALA. The commenters stated that urgent care centers “are capable of responding to an urgent need, but not an emergency medical condition.”

Several commenters suggested that only those urgent care centers that are functioning and holding themselves out to the public as an emergency department should be considered a dedicated emergency department for purposes of EMTALA.

Response: We believe it would be very difficult for any individual in need of emergency care to distinguish between a hospital department that provides care for an “urgent need” and one that provides care for an “emergency medical condition” need. Indeed, to CMS, both terms seem to demonstrate a similar, if not exact, functionality. Therefore, we are not adopting the commenters’ suggestion to except urgent care centers from dedicated emergency department status. As we have discussed above, if the department or facility is held out to the public as a place that provides care for emergency medical conditions, it would meet the definition of dedicated emergency department. An urgent care center of this kind would fall under this criterion for dedicated emergency department status.

Although not specifically stated in a comment, an underlying issue is that urgent care centers, participating in Medicare through a hospital, and which operate as satellite facilities off the main hospital campus, would meet the current definition of a dedicated emergency department, but would generally not have the capacity on site to treat patients who had been screened and determined to have serious emergency conditions. In this situation, some might argue that it would be

inappropriate for such a facility to refer a patient in an unstable condition to the main hospital campus (which could be 30 miles or more away and involve a lengthy ambulance ride) rather than to a nearby hospital that would be able to treat a patient.

Both under past and current rules, a transfer from an urgent care center to a nonaffiliated hospital is allowed under EMTALA where the facility at which the individual presented cannot stabilize the individual and the benefits of transfer exceed the risks of transfer and certain other regulatory requirements are met. Thus, our rules permit a satellite facility covered under the definition of dedicated emergency department, in this example, to screen and determine whether the case is too complex to be treated on site, that a lengthy ambulance ride to an affiliated hospital would present an unacceptable risk to the individual, and then conclude that the benefit of transfer exceeds the risk of transfer. In this case, the satellite facility could then transfer the individual to an appropriate nearby medical facility.

9. Evaluation and Treatment Issue

Comment: One commenter was concerned about the “evaluation and treatment” aspect of our proposed “dedicated emergency department” definition, and suggested that the reference to evaluation would make the definition overly inclusive, since an ambulatory clinic might have no patients treated as emergencies, but many evaluated (and ruled out) for emergencies. The commenter believed that part of any prudent ambulatory practice is to consider first the possibility of an emergency with all patients who are seen. The commenter suggested dropping the “evaluation and” portion of the definition to rely exclusively on an area’s treatment of actual emergencies as the criterion.

Response: We agree that reference to evaluation may make the definition of “dedicated emergency department” overly inclusive, in that it would count any individuals coming to emergency rooms who are evaluated but not treated for such conditions to rule out emergency medical conditions. Therefore, we are limiting the objective criterion in the third part of the “dedicated emergency department” definition in this final rule to a department or facility that provides at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.