

10. Prudent Layperson Observer Standard

Comment: Two commenters expressed opposing opinions regarding our language at 67 FR 31477 of the preamble portion of the proposed rule that stated that the definition of “dedicated emergency department” would also be interpreted to encompass those off-campus hospital departments that would be perceived by a prudent layperson as appropriate places to go for emergency care. One commenter believed that while the prudent layperson standard makes sense as it relates to the assessment of an individual’s *medical condition*, it is less appropriate with respect to an individual’s assessment of an appropriate *site of service*. The commenter stated that such assessments would likely vary, depending on factors such as perceived seriousness of the individual’s condition, and urged CMS to adopt an objective test to avoid the uncertainty inherent in a “prudent layperson standard” for determinations of dedicated emergency department status.

Another commenter supported our proposed adoption of the “prudent layperson standard” in determining whether a facility is a dedicated emergency department and stated that the prudent layperson standard is preferable to the “significant portion of the time” or “regularly” definitions or standards.

Response: We believe that our revised definition of “dedicated emergency department” specified under section VII.D. of this final rule establishes an objective standard of determination. For instance, we believe it is an objective standard of dedicated emergency department status whether or not an emergency department is licensed by the State. We also believe that it is an objective standard if a hospital department holds itself out to the public as providing emergency care.

We understand the comment concerning an individual’s assessment of an appropriate site of service. However, in view of the revised “dedicated emergency department” definition we are adopting in this final rule, we believe the prudent layperson standard is unnecessary for assessment of an area of the hospital as a dedicated emergency department. We believe our revised criteria for such status will permit the status of departments or facilities to be objectively determined.

11. Specially Equipped and Staffed Area

Comment: Several commenters addressed the “specially equipped and

staffed area of the hospital” part of the proposed definition of “dedicated emergency department.” One commenter, a hospital, stated that it has a main campus and several off-site locations, all of which are considered departments of the hospital and that none of these off-site departments are dedicated to the provision of emergency care. They also indicated that none of the staff at these off-campus departments are qualified to provide such care. One commenter believed our definition of “dedicated emergency department” should incorporate a provision that staff be specially trained in providing emergency medical care.

Another commenter requested that we clarify the terms “specialized staff” and “specialized equipment” in the proposed “dedicated emergency department” definition. The commenter suggested that “true” emergency departments have coding equipment and coding staff who know how to assign appropriate billing codes.

Several commenters believed that we should clarify that CMS will apply EMTALA only if a site is functioning as a dedicated emergency department. Another commenter stated that the obligations of EMTALA should apply to those hospital departments or other off-site locations that provide “traditional” emergency department services.

Response: As we explained earlier, based on our review of comments on the proposed definition of “dedicated emergency department,” we are adopting an alternative definition of that term that does not include a reference to special equipment or staffing. Therefore, we have not attempted to further define “specialized staff” or “specialized equipment” in this final rule.

We agree with the latter comments, but the range of comments received on the definition of a dedicated emergency department included in our proposed rule illustrates that there are varying differences in opinion as to what “functioning as a dedicated emergency department” and “traditional emergency department services” mean. Therefore, we do not believe these phrases alone are sufficient to define a dedicated emergency department. EMTALA applies not only to dedicated emergency departments but also to presentments for emergency care anywhere on hospital property.

Comment: One commenter brought to our attention a contradiction in the preamble to the proposed rule when we discuss the definition of “dedicated emergency department” at 67 FR 31472. On the one hand, the commenter recognized that we proposed to define

“dedicated emergency department” as an area that is “specially staffed and equipped” for emergency care and that “is used a significant portion of the time” for evaluation of patients for emergency medical conditions. However, the commenter pointed out that, in the same paragraph, CMS proposed that EMTALA applicability also be extended to hospital departments “that are held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis.” Because the “held out to the public” test was not included in the proposed regulation text, the commenter requested clarification on this point.

One commenter believed that only an area of the hospital with an “Emergency” sign or a “well-accepted synonym in its title” should be impacted by the EMTALA regulations.

Response: As noted earlier, and as explained more fully in section VII.D. of this preamble, we are adopting a revised definition of “dedicated emergency department” that does not reference special equipment or staffing, but does recognize departments or facilities that are held out to the public as places that provide care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We believe this revised definition will resolve any uncertainty about the “held out to the public” test.

We agree that use of the term “emergency” or a well-recognized synonym in a facility’s signage would help to identify how the facility is held out to the public and will keep this comment in mind as we develop interpretative guidelines for EMTALA surveys. However, we are not including the suggested language in the final rule because we are concerned that it could be overly prescriptive.

12. Unscheduled Appointments Criterion

Comment: Several commenters addressed the issue of defining dedicated emergency department as one that accepts unscheduled appointments. One commenter suggested that the definition of “dedicated emergency department” should focus on why the patient is present at the hospital’s emergency department. The commenter suggested that the definition should include any location that the hospital holds out as open to evaluate patients seeking unscheduled evaluation or treatment for a medical condition.

Similarly, another commenter recommended that we revise the definition of dedicated emergency department to state that it is a specially