

equipped and staffed area of the hospital that is primarily dedicated to “unscheduled” evaluation and treatment of outpatients for emergency medical conditions.

One commenter suggested that our proposed definition of dedicated emergency department be revised to specify that departments of the hospital that accept walk-in or unscheduled patients for assessment are deemed to be dedicated emergency departments for the purposes of EMTALA. The commenter stated that this definition would exempt routine clinics or hospital-based physician offices that function on an appointment-only basis, administrative areas, inpatient units, and laboratory areas that provide testing but do not provide assessment or diagnosis services for patients.

Another commenter asked us to include places that are “held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis” under the definition of dedicated emergency department. This suggestion would include the labor and delivery department of a hospital, but would exclude outpatient clinics that permit “walk-in patients”, according to the commenter.

The commenter suggested that “dedicated emergency department” be defined as any area of the hospital that provides more than 10 percent of its nonscheduled patients treatment for outright emergencies.

Response: We agree that the practice of accepting patients without requiring appointments is an important indicator of emergency department status. After consideration of all of the comments on this issue, we are adopting in this final rule a criterion in the definition of “dedicated emergency department” that permits a department or facility to be considered a dedicated emergency department if it 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.

13. Related Definition of “Hospital With an Emergency Department”

Comment: One commenter requested that we amend the proposed regulatory text at § 489.24(a), consistent with our proposed definition of “dedicated emergency department,” to state that EMTALA requirements apply to a hospital that has a *dedicated* emergency department. Other commenters suggested that our proposed definition of “hospital with an emergency department” at § 489.24(b) should either be deleted or revised so that it is defined

as a “hospital with a dedicated emergency department,” to make it consistent with our definition of “dedicated emergency department.”

Response: We considered the suggestion that we amend the “Application” paragraph of § 489.24(a) to limit EMTALA applicability to hospitals with dedicated emergency departments. However, “hospital with an emergency department” is a term of art from section 1867 of the Act that we have separately included in the definitions under § 489.24(b) to mean generally “a hospital that offers services for emergency medical conditions.” Thus, we believe it would be preferable to keep the statutory language “hospital with an emergency department” in the Application section in the regulation text. To clarify our policy in this area, we are revising the definition of “Hospital with an emergency department” under § 489.24(b) to state that it means a hospital with a dedicated emergency department as defined in § 489.24(b).

14. Other Related Suggested Revisions

Comment: One commenter recommended that the last sentence in proposed paragraph (1) of the definition of “Comes to the emergency department” in § 489.24(b) be revised to read:

“In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual’s appearance or behavior, that the individual needs examination or treatment for an *emergency medical condition.*” [New language is underlined.]

(As proposed, this definition would require only that the prudent layperson observer believe that the individual needs examination or treatment for a *medical condition.*)

Response: Section 1867 of the Act requires a hospital to provide examination and necessary stabilizing treatment to any individual who “comes to the hospital” for emergency care. We are interpreting this statutory requirement to mean that individuals who present to areas of the hospital other than departments that are labeled “Emergency” must receive care from the hospital. We believe we have clarified this requirement in prior rulemakings and in the proposed rule. However, we are including this clarification in this final rule, as well, as part of the revised final definition of dedicated emergency department.

Comment: One commenter stated that if the proposed rules are adopted as

final, on-call physicians and hospitals will refuse to accept transfers if the transfers will be received through the hospital dedicated emergency department. The commenter believed that if we apply EMTALA to patients admitted via the dedicated emergency department, it will create “perverse incentives” for hospitals and physicians to avoid admitting patients through the dedicated emergency department. The commenter stated: “On-call physicians will be reluctant to agree to accept patients for admission through the ED because then their stabilizing care of the patient in the hospital will subject them to civil monetary penalties and civil liability under EMTALA.”

Response: It is a statutory requirement under section 1867(g) of the Act that receiving hospitals with special capabilities *must* accept the transfer of an individual with an unstable emergency medical condition. The receiving hospitals must accept the patients whether or not they are received through that hospital’s dedicated emergency department—the EMTALA obligation for the receiving hospital transfers with the individual until the condition has been stabilized. Therefore, we do not believe on-call physicians and hospitals would refuse to accept transfers if the transfers are being received through the hospital dedicated emergency department, as the commenter believed. In particular, we hold this view because the EMTALA obligation is incurred at the time of arrival of the individual in accordance with an appropriate transfer, regardless of which door the individual enters or whether he or she is admitted immediately to the receiving hospital.

D. Provisions of the Final Rule Regarding Clarification of “Come to the Emergency Department”

For the reasons discussed throughout section VII. of this preamble, and after full consideration of the public comments received—

We are adopting as final the proposed organizational changes to § 489.24(a) on the application of EMTALA to include both the screening and stabilization or transfer requirements. (We note that later in this preamble under section X., we make an additional change to paragraph (a) to clarify that if the hospital admits the individual as an inpatient for further treatment after screening, the hospital’s obligation under EMTALA ends.)

We are adopting paragraphs (1) and (2) under the proposed definition of “come to the emergency department” as final without changes.