

We are revising the proposed definition of “dedicated emergency department” at § 489.24(b), to read as follows:

“Dedicated emergency department” means any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

(1) It is licensed by the State in which it is located under applicable State law as an emergency room or emergency department;

(2) It 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; or

(3) During the calendar year immediately preceding the calendar year in which a determination under § 489.24 is being made, based on a representative sample of patient visits that occurred during that calendar year, it provided 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.

We believe this revised definition of “dedicated emergency department” sufficiently addresses many of the suggested proposals submitted by the commenters on determining what is an emergency department for purposes of EMTALA.

We are revising the proposed definition of “hospital with an emergency department” to make it consistent with our revised definition of “dedicated emergency department.”

VII. Applicability of EMTALA: Individuals Come to the Dedicated Emergency Department for Nonemergency Services (§ 489.24(c))

A. Background

We sometimes receive questions whether EMTALA’s requirements apply to situations in which an individual comes to a hospital’s dedicated emergency department, but no request is made on the individual’s behalf for emergency medical evaluation or treatment. In view of the specific language of section 1867 of the Act and the discussion in section VII. of this preamble, which addresses the definition of a hospital’s dedicated emergency department, we believe that a hospital must be seen as having an EMTALA obligation with respect to any individual who comes to the dedicated emergency department, if a request is made on the individual’s behalf for examination or treatment for a medical

condition, whether or not the treatment requested is explicitly for an emergency condition. A request on behalf of the individual would 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 a medical condition.

This does not mean, of course, that all EMTALA screenings must be equally extensive. The statute plainly states that the objective of the appropriate medical screening examination is to determine whether or not an emergency medical condition exists. Therefore, hospitals are not obligated to provide screening services beyond those needed to determine that there is no emergency medical condition.

In general, a medical screening examination is the process required to reach, with reasonable clinical confidence, a determination about whether a medical emergency does or does not exist. We expect that in most cases in which a request is made for medical care that clearly is unlikely to involve an emergency medical condition, an individual’s statement that he or she is not seeking emergency care, together with brief questioning by qualified medical personnel, would be sufficient to establish that there is no emergency condition and that the hospital’s EMTALA obligation would thereby be satisfied.

B. Provisions of the Proposed Rule

To clarify our policy in this area, in the May 9, 2002 proposed rule (67 FR 31473), we proposed to redesignate paragraphs (c) through (h) of § 489.24 as paragraphs (d) through (i) (we proposed to remove existing paragraph (i)) and to add a new paragraph (c) to state that if an individual comes to a hospital’s dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an “emergency medical condition” as defined in the regulations. (In the May 9, 2002, proposed rule, we included an Example 1 as illustrative of application of this policy (67 FR 31473).)

C. Summary of Public Comments and Departmental Responses

Comment: Many commenters addressed our proposed clarification of presentments of individuals to

dedicated emergency departments for nonemergency services at 67 FR 31473. One commenter stated that only those individuals requesting a “medical examination” be required to receive a medical screening examination by a physician or other qualified medical personnel. Another commenter recommended that EMTALA not apply to requests for nonemergency care inside the dedicated emergency department. One commenter believed that EMTALA should not apply to individuals coming to the dedicated emergency department to obtain previously scheduled or followup care.

Response: At 67 FR 31473, *et seq.*, of the preamble to the May 9, 2002 proposed rule, and also above, we explicitly clarified the issue concerning when an individual comes to a hospital’s dedicated emergency department but no request is made on the individual’s behalf for emergency medical evaluation or treatment. To address this scenario, we stated that hospitals are not obligated to provide screening services beyond those needed to determine whether an emergency medical condition exists. In addition, we proposed regulatory language to address the issue (proposed § 489.24(c)) to specify that if an individual comes to a hospital’s dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition. Therefore, while EMTALA *does* apply to any individual who presents to a hospital’s dedicated emergency department with a medical condition, it does so only to the extent that the individual must be screened for emergency medical conditions and supplied necessary stabilizing treatment.

Section 1867(a) of the Act clearly states that a hospital with an emergency department is required to provide an appropriate medical screening examination to every individual who presents at the hospital’s emergency department with a medical condition. However, this screening is only necessary to the extent it takes the hospital to determine whether the individual has an emergency medical condition. Once the individual is screened and it is determined the individual has only presented to the dedicated emergency department for a