

nonemergency purpose, such as followup care, the hospital's EMTALA obligation ends for that individual at the completion of the medical screening examination.

*Comment:* One commenter noted that, in many cases, individuals come to the dedicated emergency department of the hospital at which their regular physician practices and ask to be seen for nonemergency medical conditions that could appropriately be treated in the physician's office. The commenter asked whether, in these circumstances, a registered nurse or other qualified medical person on duty at the dedicated emergency department could perform a screening to rule out the presence of an emergency medical condition and, if it is determined that the patient does not have an emergency medical condition, refer the patient to the physician's office for treatment.

Another commenter stated that we should provide more guidance to allow busy emergency departments to refer patients without an "emergency medical condition" to primary care or specialty care clinics, or both.

*Response:* As stated in proposed § 489.24(c), if an individual comes to a dedicated emergency department and a request is made for examination or treatment of a medical condition, but the nature of the request makes it clear that the condition is not of an emergency nature, the hospital is required to perform only 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. Under the circumstances described by these commenters, the regulations would not require that such screening be done by a physician. On the contrary, we believe the individual could be screened by the appropriate nonphysician emergency department staff and, if no emergency medical condition is found to exist, referred to his or her physician's office for further treatment. Because we believe that proposed paragraph (c) clearly would permit such a referral, we do not believe a further regulations change is needed in this final rule to clarify this point. We note that while EMTALA does not require that all screenings be performed by an M.D. or D.O., any nonphysician (such as an emergency room registered nurse) who performs such screening should be an individual whom the hospital has designated as a "qualified medical person" for purposes of appropriate transfer certification under § 489.24(d)(1)(ii)(C) (redesignated in this final rule as § 489.24(e)(1)(ii)(C)).

*Comment:* Many commenters believed that the final rule should make clear that EMTALA does not apply to nonemergency services delivered in a dedicated emergency department and does not apply to a site other than a dedicated emergency department unless emergency services are requested.

Similarly, several commenters requested that we clarify that a hospital has no obligation under EMTALA to an individual who presents at a dedicated emergency department but does not request examination or treatment for a medical condition. Specifically, one commenter believed that we should clarify that hospitals are not required under EMTALA to provide medical screening examinations to individuals who request a medical service that is not examination or treatment for a medical condition, such as preventive care services, pharmaceutical services, or medical clearances for law enforcement purposes (such as blood alcohol tests required by police).

*Response:* We agree that a hospital has no obligation under EMTALA to an individual who comes to a dedicated emergency department if there is no request made by or on behalf of the individual for examination or treatment for a medical condition, and the individual's appearance or behavior would not cause a prudent layperson observer to believe that examination or treatment for a medical condition is needed and that the individual would request that examination or treatment if he or she were able to do so. We do not agree that a hospital has no obligation under EMTALA to an individual who presents at a dedicated emergency department for "nonemergency purposes" because such a purpose can be a medical one and the statute requires that a hospital perform a medical screening examination to any individual who presents to the emergency department with a medical condition. We agree with another commenter that if an individual presents to a dedicated emergency department and requests services that are not examination or treatment for a medical condition, such as preventive care services, the hospital is not obligated to provide a medical screening examination under EMTALA to this individual.

We note that pharmaceutical services in a dedicated emergency department may be for medical conditions and are, therefore, subject to EMTALA. We also wish to emphasize that the applicable principle is that presentments to a dedicated emergency department that meet other applicable criteria for EMTALA applicability will be

considered to be subject to EMTALA if there is a request by or on behalf of the individual for examination or treatment for a medical condition, or the appearance or behavior of the individual would cause a prudent layperson observer to believe that the individual needed such examination or treatment and that the individual would request that examination or treatment if he or she were able to do so. Under this general principle, we will evaluate specific presentments, including requests by law enforcement authorities for medical clearance of persons who are about to be incarcerated or for blood alcohol or other tests to be used as evidence in criminal proceedings, on a case-by-case basis.

For example, an individual being maintained on psychotropic medication may come to an emergency department and complain of experiencing suicidal or homicidal urges because he or she has exhausted his or her supply of medication. If examination of the individual verifies the existence of an emergency medical condition and a supply of the patient's normal medication is required to stabilize that condition, then EMTALA would require that the hospital provide that medication. Of course, this does not mean that hospitals are required by EMTALA to provide medication to patients who do not have an emergency medical condition, simply because the patient is unable to pay or does not wish to purchase the medication from a retail pharmacy. We will address these types of issues in our interpretative guidelines.

*Comment:* One commenter noted that the issue of nonemergency patient care that takes place in the dedicated emergency department and overcrowding is a significant concern. The commenter stated that education aimed at the public by CMS to help them understand appropriate alternatives could contribute to reducing abuse.

*Response:* We agree that it is worthwhile to encourage patients to seek more appropriate sources of nonemergency care, and will take this into account as we develop EMTALA-related patient information and education material.

*Comment:* One commenter described a situation where hospitals use their emergency departments as an access point for registration purposes for the entire hospital after the normal registration area is closed. The commenter asked whether every individual would be covered under EMTALA and would require a medical screening even though not everyone is