

coming to the emergency department seeking emergency medical treatment.

Similarly, another commenter stated that some hospitals, particularly rural ones, have found that it is most cost-effective for the hospital if it was configured to have one hospital entrance for patients who present for emergency care and for patients who do not present for emergency care. The commenter requested clarification on whether an EMTALA screening would be required for both types of patients who walk through that one entrance.

One commenter described a situation where a hospital operates ambulatory care centers and other facilities (such as primary care clinics) in tandem with the hospital's dedicated emergency department. The commenter believed the nondedicated emergency department of the hospital should be explicitly excepted from the definition of "dedicated emergency department" to address this "tandem" scenario.

*Response:* Regarding the first two comments, we agree that EMTALA does not apply to individuals who may pass through a hospital's emergency department but do not request examination or treatment for a medical condition, have such a request made on their behalf, or indicate through their appearance or behavior that examination or treatment for a medical condition would, in the judgment of a prudent layperson, be needed. We have not revised the final rule on this point, but intend to take it into account in developing interpretative guidelines and training materials for EMTALA surveyors. The third comment does not raise an issue of EMTALA policy, but merely shows that it will be necessary in some cases to determine exactly which physical locations constitute a hospital's dedicated emergency department. Such decisions will be made a case-by-case basis by CMS, based on information provided by the State survey agency.

*Comment:* One commenter suggested that we define whether there has been a request for examination or treatment under EMTALA by the resources that it would take to fulfill the request. The commenter gave an example of a request for unscheduled medical services that would require the service of a "qualified medical provider." The commenter stated that a request to take out stitches does not require a doctor or consultation with a doctor unless there is an additional complaint expressed.

*Response:* While this is an interesting suggestion, we believe that it is one that would be difficult to implement as an objective standard, because estimates of resources needed will necessarily be

subjective. Therefore, we are not revising the final rule based on this comment.

*Comment:* One commenter believed that the standard stated at proposed § 489.24(c), "the nature of the request makes it clear the medical condition is not of an emergency nature", is too subjective. The commenter believed it would almost certainly invite State surveyors to second guess the determination of the qualified medical person.

*Response:* The purpose of conducting an EMTALA investigation is to ascertain whether or not the hospital has violated the requirements of § 489.24 or the related requirements of § 489.20. The survey is conducted in accordance with applicable CMS survey procedures and policies. The surveyor's recommendation of a violation determination is based on facts uncovered by the onsite investigation. The CMS regional office will make the final compliance determination with information obtained after the onsite investigation by the State survey agency.

*Comment:* Several commenters believed that triage of the individual presenting to the dedicated emergency department should be adequate for purposes of fulfilling EMTALA screening obligations. Specifically, one commenter did not believe that EMTALA should apply to individuals who present to the dedicated emergency department with no "significant distress or risk" as determined by triage of vital signs, and "who are comfortable and active" in a waiting area whereby they are well provided for while they are waiting for care or treatment.

Another commenter asked us to clarify whether vital signs must be obtained in every medical screening examination upon presentment to a hospital's dedicated emergency department.

*Response:* Section 1867(a) of the Act requires that individuals coming to the emergency department be provided a medical screening examination. The statute states:

"In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this title) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within

the meaning of subsection (e)(1)) exists."

Triaging is not equivalent to a medical screening examination. Triaging merely determines the "order" in which patients will be seen, not the presence or absence of an emergency medical condition. If the medical screening examination is appropriate and does not reveal an emergency medical condition, the hospital has no further obligation under § 489.24.

The decision to take vital signs may be required by the qualified medical professional or the hospital's emergency department's policies and procedures, or both. Vital signs are indicators of a patient's level of wellness and are valuable parameters to assist health professionals in making medical decisions concerning a patient's health needs. The patient's medical condition and the discretion of the practitioner will determine the need for monitoring of vital signs.

We do not believe the taking of a patient's vital signs is required for every presentment to a hospital's dedicated emergency department. As we have stated above, 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 medical condition and the hospital's EMTALA obligation would thereby be satisfied.

*Comment:* One commenter requested that we modify proposed § 489.24(c) to provide that EMTALA imposes no minimum requirements for conducting medical screening examinations for cases falling within this paragraph. The commenter stated that the extent of the necessary examination is within the sole discretion of the qualified medical personnel performing the examination.

*Response:* As required by statute, 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 for examination or treatment for a medical condition. While we will refrain from dictating what type of medical screening examination is required for each individual who presents to the dedicated emergency department, we believe that such screenings should be provided to each individual commensurate with the condition that is presented. As we have stated previously, this does not mean that all EMTALA screenings must be equally extensive. Hospitals are not obligated to