

provide screening services beyond those needed to determine that there is no emergency medical condition.

We agree with the commenter that the extent of the necessary examination is generally within the judgment and discretion of the qualified medical personnel performing the examination. However, we note that the extent and quality of the screening by the qualified medical personnel are subject to review (by QIOs and State surveyors, for example), in the case of a complaint filed in accordance with section 1867 of the Act.

*Comment:* One commenter expressed concern about enforcement of the standard stated in proposed § 489.24(c). The commenter was concerned with the scenario in which it is later determined that an individual who had presented to the dedicated emergency department for such medical treatment as suture removal (as used in the example at 67 FR 31473) was, in fact, suffering from an emergency medical condition, and this emergency medical condition was not detected during this less extensive examination.

*Response:* As we stated in the proposed rule, hospitals are not obligated to provide screening services in the dedicated emergency department beyond those needed to determine that there is no emergency medical condition. We assume that qualified medical personnel or physicians will be performing the medical screening examination (however modified for the condition presented) to determine whether the individual is suffering an emergency medical condition. If it is later found that the individual *had* been suffering an emergency medical condition upon presentment to the dedicated emergency department but only asks for examination or treatment for the suture removal, or some lesser medical condition, and a complaint is filed for an alleged dumping in accordance with section 1867 of the Act, as stated above, the extent and quality of the screening by the qualified medical personnel would be subject to review by State surveyors to permit a determination to be made as to whether there was an EMTALA violation. We note that if, upon investigation of the alleged dumping, it is found that an adequate medical screening had been performed, the hospital would not be found liable under EMTALA.

*Comment:* One commenter asked why CMS needed to add a new § 489.24(c) to reinforce the requirement that all visits to the emergency department triggers EMTALA obligations, whether the individual is requesting emergency services or coming for nonemergency

services. The commenter indicated that “any individual” who comes to the emergency department requesting care is already covered by EMTALA.

Another commenter stated that the real issue is when a hospital is required to perform a medical screening examination and when it is *not* required to perform one. The commenter indicated that staff of hospital emergency departments should be able to ask patients why they have come to the emergency department.

*Response:* In proposed § 489.24(c), and accompanying language in the preamble at 67 FR 31473, we attempted to provide some guidance to hospitals and physicians as to whether EMTALA’s requirements apply to situations in which an individual comes to a hospital’s dedicated emergency department, but no request is made for emergency medical evaluation or treatment. While we have repeatedly stated that we are refraining from dictating to hospitals standards for medical screening examinations, we hoped to address some concerns in the provider community that all EMTALA screenings must be equally extensive to each individual who presents to the dedicated emergency department. Rather, once an individual states that he or she is not at a hospital’s dedicated emergency seeking emergency care as the commenter suggested, some brief questioning by qualified medical personnel of why the individual is there would be adequate to fulfill the requirements of the medical screening examination for purposes of EMTALA.

*Comment:* One commenter asked for clarification on whether EMTALA applies to individuals who seek outpatient services from the hospital on an unscheduled basis; for example, when an individual’s physician directs the individual to go to the hospital to obtain laboratory and x-rays so that the physician may determine whether the individual has pneumonia or another condition.

*Response:* As explained elsewhere in this preamble, whether EMTALA applies to a specific individual will depend on whether the individual presents to the hospital’s dedicated emergency department or to another area of the hospital, and on what type of request for examination or treatment is made. For example, an individual being sent to a hospital for specific diagnostic tests ordered by a physician outside the hospital would normally be directed by that physician to go to the hospital’s laboratory and radiology department, not to the dedicated emergency department. In either setting, a simple request for a diagnostic test or

image generally would not be considered a request for examination or treatment for what may be an emergency medical condition, so the hospital would have no EMTALA obligation to that individual. However, if the individual were to tell the hospital staff at the laboratory or radiology department that he or she needed emergency care, EMTALA would apply. EMTALA also would apply if, in the absence of a verbal request, the individual’s appearance or behavior were such that a prudent layperson observer would believe the individual needed examination or treatment for an emergency medical condition and that the individual would request that examination or treatment if he or she were able to do so. Of course, in any actual complaint investigation, the State survey agency and, where appropriate, the QIO would review all actual relevant facts and circumstances to ensure that the regulations are applied appropriately in that case.

*Comment:* One commenter was concerned with the example at 67 FR 31473 of the proposed rule of a woman presenting to a hospital’s emergency department with a request for suture removal. The commenter asked for information on the location of the outpatient clinic to which the qualified medical nurse refers the woman for the suture removal after the nurse screens the woman for any emergency medical conditions and also the timing of the clinic’s evaluation. The commenter also stated that it would be helpful to clarify that “same-day on-campus referral” to another medical facility outside the dedicated emergency department is not mandatory for EMTALA purposes.

*Response:* By the commenter’s request for information about the location of the outpatient clinic to which the patient is referred, we assume the commenter is interested in whether the outpatient clinic in the example is a department of the hospital (that is, provider-based). We do not see this as a particularly relevant fact, nor do we see the issue of timing of that outpatient clinic’s evaluation to the issue of the applicability of EMTALA to that patient on the part of the hospital.

However, we do believe that it would not be an EMTALA obligation for the qualified medical nurse in the example to make the referral to the outpatient clinic upon finding that the woman does not have an emergency medical condition. Nevertheless, it would appear to us that good standards of practice would dictate that any qualified medical personnel screening the patient would refer the patient elsewhere for treatment of her obvious medical