

condition, rather than simply sending her out of the emergency department upon finding that she did not have an emergency medical condition.

#### *D. Provisions of the Final Rule*

We are adopting, as final, the proposed provisions under § 489.24(c).

### **VIII. Applicability of EMTALA: Individual Presents at an Area of the Hospital's Main Campus Other Than the Dedicated Emergency Department (§ 489.24(b))**

#### *A. Background*

Routinely, individuals come to hospitals as outpatients for many nonemergency medical purposes. If such an individual initially presents at an on-campus area of the hospital other than a dedicated emergency department, we would expect that the individual typically would not be seeking emergency care. Under most of these circumstances, EMTALA would therefore not apply (this concept is further discussed in section IX.B. of this preamble). However, questions have arisen as to whether a hospital would incur an EMTALA obligation with respect to an individual presenting at that area (that is, an on-campus area of the hospital other than a dedicated emergency department) who requests examination or treatment for what is believed to be an emergency medical condition, or had such a request made on his or her behalf.

#### *B. Provisions of the Proposed Rule*

In the May 9, 2002 proposed rule (67 FR 31473 and 31506), we proposed to specify in the regulations (§ 489.24(b), definition of "come to the emergency department") that, for an individual who presents on hospital property other than the dedicated emergency department and requests examination or treatment for what may be an emergency medical condition, a request would be considered to exist if the individual requests examination or treatment for what the individual believes to be an emergency medical condition. We further explained that if there is no actual request, for example, if the individual is unaccompanied and is physically incapable of making a request, the request from the individual would be considered to exist if a prudent layperson observer would believe, based upon the individual's appearance or behavior, that the individual needs treatment for an emergency medical condition. We stated that the proposed policy was appropriate because section 1867 protections should not be denied to

those individuals whose need for emergency services arises upon arrival on hospital property at the hospital's main campus, but before they have presented to the dedicated emergency department.

Under the proposed policies, a request for examination or treatment by an individual presenting for what is believed to be an emergency medical condition at an on-campus area of the hospital other than the dedicated emergency department would not have to be expressed verbally in all cases. In some cases, the request may be inferred from what a prudent layperson observer would conclude from an individual's appearance or behavior. While there may be a request (either through the individual or a prudent layperson), thereby triggering an EMTALA obligation on the part of the hospital, this policy does not mean that the hospital must maintain emergency medical screening or treatment capabilities in each department or at each door of the hospital, nor anywhere else on hospital property, other than the dedicated emergency department.

Our proposal, and the considerations on which it is based, are further discussed in the preamble to the May 9, 2000 proposed rule (67 FR 31473). We also specifically solicited comments from hospitals and physicians on examples of ways in which hospitals presently react to situations in which individuals request emergency care in areas of the hospital other than the hospital's emergency department.

In the May 9, 2002 proposed rule, we also proposed that EMTALA would not apply to an individual who experiences what may be an emergency medical condition if the individual is an outpatient (as that term is defined in 42 CFR 410.2). We explained that we would consider such an individual to be an outpatient if he or she has begun an encounter (as that term is defined in 42 CFR 410.2) with a health professional at the outpatient department. Because such individuals are patients of the hospital already, we believe it is inappropriate that they be considered to have "come to the hospital" for purposes of EMTALA. However, we note that such an outpatient under our proposal who experiences what may be an emergency medical condition after the start of an encounter with a health professional would have all protections afforded to patients of a hospital under the Medicare hospital CoPs (as discussed in section XIV. of the preamble). Hospitals that fail to provide treatment to these patients could face termination of their Medicare provider agreements for a violation of the CoPs.

In addition, as patients of a health care provider, these individuals are accorded protections under State statutes or common law (for example, State malpractice law and patient abandonment torts) as well as under general rules of ethics governing the medical profession. Our proposal, and the considerations on which it is based, are further discussed in the preamble to the May 9, 2002 proposed rule (67 FR 31473 through 31474).

In the proposed rule, we also proposed to retitle the definition of "property" at § 489.24(b) to "hospital property" and relocate it as a separate definition. In addition, we proposed to clarify which areas and facilities are not considered hospital property.

#### *C. Summary of Public Comments and Departmental Responses*

##### **1. Presentation Outside the Dedicated Emergency Department**

*Comment:* Regarding our proposed clarifications on the applicability of EMTALA for presentations on hospital property outside the dedicated emergency department, one commenter believed that, while the clarifications were necessary, "it is perhaps a sad indictment of our healthcare system that we actually have to mandate medical providers that someone unconscious must receive immediate medical care."

\* \* \* Anyone doing this sort of denial of care deserves more than an EMTALA citation." Many other commenters expressed concern about the absence from the proposed regulatory text of qualifying language that is set forth in the preamble of the proposed rule. Specifically, one commenter cited the proposed preamble language at 67 FR 31473 that states:

"\* \* \* EMTALA is triggered in on-campus areas of the hospital other than a dedicated emergency department where, in an attempt to gain access to the hospital for emergency care, an individual comes to a hospital and requests an examination or treatment for a medical condition that may be an emergency." (Emphasis added.) The commenter further cited the preamble at 67 FR 31474:

"We are proposing that EMTALA would not apply to \* \* \* an individual who \* \* \* experiences what may be an emergency medical condition *if the individual is an outpatient* (as that term is defined at 42 CFR § 410.2) *who has come to the hospital outpatient department for the purpose of keeping a previously scheduled appointment*. We would consider such an individual to be an outpatient if he or she has *begun an encounter* (as that term is