

that protections under the CoPs may later be afforded to an outpatient who is already protected by EMTALA does not end the individual's EMTALA protection.

In response to the commenter's concern that we incorporate the language regarding coming to the hospital in order "to gain access to the hospital for emergency care" into the regulation text, while in most emergency cases individuals will come to a hospital in order to gain access to emergency care at the hospital, not all emergency patients start out that way. Some individuals may come to the on-campus hospital property for reasons other than to seek medical services for themselves (examples would include a hospital employee, or a visitor of the hospital). Such individuals would not be protected by the hospital CoPs if they happen to experience what may be an emergency medical condition while on hospital property, since they are not hospital patients. Therefore, we are clarifying here that we consider such individuals to have "come to the emergency department." Under section 1867(a) of the Act, such individuals are protected by EMTALA and hospitals must provide them with screening and necessary stabilizing treatment.

To address the comment concerning the substitution of the term "outpatients" in the proposed definition of "dedicated emergency department", we mention the comment in this section of the preamble of this final rule because, as the commenter pointed out, it would appear to be inconsistent with our policy in our proposed regulations text at § 489.24 that EMTALA would not apply to any *patient*, as defined in proposed § 489.24(b), who would include "outpatients" as defined at § 410.2, and yet we would use the term "outpatients" in our application of EMTALA for individuals that present at dedicated emergency departments. In addition, we also proposed in the preamble to the proposed rule that EMTALA would not apply to outpatients with emergency medical conditions that arise during an encounter. We are clarifying in this final rule that EMTALA *will* apply to any individual who presents to the hospital for examination or treatment for an emergency medical condition, but EMTALA *will not* apply to individuals who have begun to receive outpatient services as part of an encounter, as defined in § 410.2, other than an encounter that the hospital is obligated by EMTALA to provide.

In this final rule, in response to comments, we are revising our definition of "dedicated emergency

department" at § 489.24(b) to specify that such a department is a unit in the hospital that meets at least one of three criteria, one of which is that it is any department or facility of the hospital that provides for the examination or treatment of emergency medical conditions for at least one-third of all of its outpatient visits, based on a representative sample of patient visits for the calendar year immediately preceding the calendar year in which a determination is being made. This revised language avoids using the term "individuals" or "member of the public" and would sufficiently encompass any person, including hospital staff who may become ill, who comes to a hospital's emergency department for medical care.

In addition, we are revising the proposed definition of "patient" under § 489.24(b) to indicate that EMTALA does not apply to an individual who has begun to receive outpatient services as part of an encounter, as defined in § 410.2, other than an encounter that the hospital is obligated by EMTALA to provide.

Comment: One commenter asked us to clarify whether EMTALA is triggered for an individual who comes to the hospital as an outpatient for a scheduled appointment and who, after treatment has commenced, experiences an emergency medical condition, and is then moved to the dedicated emergency department for treatment. Similarly, the commenter asked whether an individual transported by the hospital to the dedicated emergency department from an off-campus department that is not a dedicated emergency department is an EMTALA patient upon arrival. The commenter asked whether individuals in these two settings should be handled differently.

Response: As we have described above, in this final rule, we are providing that individuals who have begun to receive outpatient services during an encounter are not protected under EMTALA if they are later found to have an emergency medical condition (even if they are then transported to the hospital's dedicated emergency department). These individuals are considered patients of the hospital and are protected by the Medicare hospital CoPs and relevant State law. In addition, as we describe below, individuals who present to a provider-based, off-campus department that is not a dedicated emergency department with emergency conditions are not protected by EMTALA, but rather by the hospital CoPs as well as relevant State law.

Comment: A number of commenters expressed concern about EMTALA applicability to individuals who present at a hospital for emergency care outside the dedicated emergency department. One commenter stated that establishing a "different set of expectations" for departments that are not dedicated emergency departments when an individual presents for care is likely to cause confusion and is asking potentially nonclinical persons to make clinical judgments they have no training to make. Another commenter stated that medical personnel cannot be at all hospital locations to conduct screening and stabilization services, and believed that we should revise how medical staff are required to respond to medical emergencies in nonemergency department locations.

Response: As we have expressed above, whether an individual presents for care at a hospital's dedicated emergency department, or elsewhere on hospital property, if EMTALA is triggered, the hospital has the same obligations to that individual. It is up to the hospital to determine how best to provide the screening and necessary stabilizing treatment to the individual who presented. In either case, the hospital is responsible for treating the individual within the capabilities of the hospital as a whole, not necessarily in terms of the particular department at which the individual presented.

Whether the hospital sets up procedures to immediately transport the individual to the hospital's dedicated emergency department, or whether the hospital sets up procedures to send a "trauma crew" or "crash team" of physicians and nurses out to the individual on site, we do not believe it is appropriate for us to dictate to hospitals how best to treat individuals who present for emergency care in hospital departments other than dedicated emergency department locations.

In addition, we do not believe treatment of an emergency patient would involve having nonclinical hospital staff making determinations about an individual's medical condition; rather, we envision that, as stated above, hospitals would set up procedures to provide for emergency care to individuals who present in hospital departments other than dedicated emergency department locations on the hospital campus.

2. Prudent Layperson Standard

Comment: A number of commenters expressed concern about our proposed "prudent layperson" standard. We stated in the proposed rule that, for both presentments inside the dedicated