

emergency department and also elsewhere on hospital property, a request for examination or treatment would be considered to exist if a *prudent layperson observer* would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for an emergency medical condition (or examination or treatment for a medical condition for presentments inside the dedicated emergency department).

Many other commenters supported our proposed prudent layperson standard; they believed that the standard would ensure that the obvious emergency situation would be addressed, even if the individual were unable to verbalize the request.

Several other commenters requested that we substitute the term "obvious implied request" or "implied request," instead of relying on the perceptions of a prudent layperson for individuals who are unable to articulate their needs.

Many commenters believed that hospitals must be on notice of an individual's presentment in order for EMTALA to be triggered to that individual. One commenter stated: "Because an EMTALA obligation is triggered by a patient-generated request, hospital personnel must be made aware of the individual's presence and observe the appearance or behavior or both of that person in order to respond appropriately. Additionally, all hospitals need policies that describe steps to be taken to assure that a person in clear need, for example, a visitor who collapses in the cafeteria, receives medical attention."

Several commenters requested that the final rule make clear that EMTALA does not apply to an individual presenting on on-campus hospital property other than a dedicated emergency department unless emergency services are requested.

Response: First, we agree with the commenters that hospital personnel must be aware of the individual's presence and observe the appearance or behavior, or both, of that person in order for EMTALA to be triggered. Obviously, the hospital must be on notice of the individual's existence and condition for any violation of the statute to take place. This also applies to presentments for off-campus dedicated emergency departments; only if the hospital's staff are aware of an individual's presence in the department for examination or treatment for a medical condition is EMTALA triggered.

We also agree with the commenters that EMTALA does not apply elsewhere on on-campus hospital property other

than a dedicated emergency department unless *emergency* services are requested. As we clarified in section V.J.8 of the preamble of the May 9, 2002 proposed rule (67 FR 31473 through 31474), and also as we discuss in section IX. of the preamble, a request for treatment would be considered to exist if the individual requests examination or treatment for what the individual believes to be an emergency medical condition. Where there is no actual request because, for example, the individual is unaccompanied and physically incapable of making the request, the request from the individual will be considered to exist if a prudent layperson observer would believe, based upon the individual's appearance or behavior, that the individual needs examination or treatment for an emergency medical condition.

However, to address the commenters who requested an "obvious implied request standard" instead of the "prudent layperson standard", we believe the prudent layperson standard is necessary for both presentments inside the dedicated emergency department and elsewhere on hospital property. We are concerned about the circumstance where hospital staff observe the appearance or behavior of an individual who clearly has an emergency medical condition, but do nothing to provide treatment for that individual.

In addition, the term "prudent layperson" is consistent with the Medicare and Medicaid programs, in general. We believe it is appropriate and realistic to utilize this objective standard in the EMTALA context as well, because it reflects a standard for judging whether the hospital should have acted—it does not shift control of events to any particular individual layperson.

Comment: One commenter who supported the prudent layperson standard suggested that the proposed regulatory language at paragraphs (1) and (2) under the definition of "comes to the emergency department" under § 489.24(b) is too broad and could encompass situations for which CMS did not intend EMTALA to apply. The commenter recommended that CMS modify the language in those paragraphs to state: "a request on behalf of the individual will be considered to exist if *the individual is unable to make the request* and a prudent layperson observer would believe. * * *" The commenter stated that an individual need not rely on the prudent layperson observer if he or she is able to request examination or treatment for himself or herself.

Another commenter requested that CMS limit application of the prudent layperson language to circumstances where the need for emergency services is clear and the individual cannot make the request and there is no one to make the request on behalf of the individual.

Response: We agree with the commenters that the prudent layperson standard is to be relied upon only in circumstances where the individual is unable to make the request for examination or treatment of himself or herself. However, we do not agree that a change in the regulatory language is needed. We believe that our proposed regulatory language in that section, which states: "*In the absence of such a request by or on behalf of the individual*, a request on behalf of the individual will be considered to exist if a prudent layperson observer * * *" (emphasis added), encompasses any situation in which an individual has come to the hospital and a prudent layperson observer would believe the individual may have an emergency medical condition and that the individual would request examination or treatment if he or she were able to do so, whether or not the individual is unaccompanied.

Comment: One commenter stated that hospital staff do not want to be in the position of interpreting the "prudent layperson" terminology. Another commenter was concerned that some members of a hospital's staff may not be "prudent laypeople" who are in the position of determining whether someone needs emergency care. For example, a hospital may employ a disabled worker to provide basic yard services. A third commenter stated that many hospitals use volunteers to staff courtesy desks to assist patient families and provide directions in and around the hospital. The commenter was concerned that requesting volunteer hospital staff to provide emergency care for individuals presenting at the hospital outside of the dedicated emergency department is "excessive." The commenter stated that if volunteers are assigned this responsibility, they may no longer provide volunteer services and the hospital would need to add paid staff, which would increase the cost of care. The commenter added that these volunteers or other staff would need training to comply with this new definition and responsibility.

Response: Our rationale for the prudent layperson standard is to determine whether an EMTALA obligation has been triggered toward a particular individual. It is a legal standard that would be used to determine whether EMTALA was