

considered “stabilized” within the meaning of § 489.24. The commenter requested clarification of the term “medically stable”; that is, whether “stable” in this context refers to the medical definition of “stable.”

Response: Again, because we are clarifying in this final rule that, except in limited circumstances, EMTALA does not apply to hospital inpatients, the comment above on stability as an inpatient is not relevant for purposes of EMTALA.

Comment: Several commenters asked us to clarify that EMTALA would not apply to inpatients who are stable but who are scheduled for inpatient surgery for an emergency medical condition, such as patients who need an angiogram or bypass surgery, after seeing their physician for chest pain. One commenter requested clarification on the issue of individuals directly admitted to the hospital for an emergency medical condition, for example, appendicitis, although the individual is not seeking emergency services from the hospital.

Response: As we have clarified above, once an individual has been admitted as an inpatient (including individuals who have been directly admitted as inpatients upon presentation to the hospital), EMTALA no longer applies, except in the limited circumstances discussed above concerning admissions not made in good faith.

3. Logs on EMTALA Patients

Comment: One commenter who supported our proposed policy on the applicability of EMTALA to admitted emergency patients asked whether the hospital inpatient departments would be required to post signs specifying the EMTALA rights of patients and keep a log of patients who are still covered by EMTALA. The commenter also asked whether the inpatient departments would be required to have EMTALA policy and procedure manuals.

Response: Because we have decided in this final rule that EMTALA does not apply to individuals who are admitted as inpatients in good faith, the comment above concerning the posting of signs, maintenance of logs on inpatients covered by EMTALA, and policies and procedures for EMTALA purposes as described by the commenter will not be required.

4. Other Issues

Comment: One commenter believed that the CMS proposed approach of EMTALA nonapplicability to admitted elective inpatients is inappropriate. The commenter gave several reasons for this belief: Every court in the United States

that has considered the issue of hospital obligation has concluded that EMTALA application commenced when the hospital or its agents “became aware” that the individual had an emergency medical condition or was unstable as provided by the law; the U.S. Supreme Court case in *Roberts v. Galen of Virginia*, 525 U.S. 249 (1999) specifically stated that the obligations to stabilize, provide additional care or provide an appropriate transfer, or both, are completely unrelated to whether or not the patient came to the emergency department under section 1867(a) of the Act; and *Lopez-Soto v. Hawayek*, 175 F.3d 170 (1st Cir. 1999), interpreted the *Roberts* case and addressed and rejected the arguments made by CMS in support of the CMS interpretation of the law and held that once the patient was in the hospital, EMTALA attached when the hospital or doctor knew of the unstable condition.

Response: We disagree with the commenter. After reviewing the EMTALA statute and its legislative history, we find no indication that Congress intended EMTALA to apply to hospital inpatients. To the contrary, the legislative history makes several references to individuals who were denied emergency medical care at hospital emergency rooms, but we find no references to similar problems faced by hospital inpatients. (See H.R. Rept. No. 99–241 (I), at 27 (1985), reprinted in 1986 U.S.C.C.A.N. 579, 605.) Therefore, we believe that Congress intended for EMTALA to address the issue of inadequate emergency care for individuals who presented with emergency medical conditions seeking such care from hospital emergency departments. Moreover, while we are not bound by judicial precedent in cases in which we were not a party, we are familiar with the *Roberts v. Galen*, 525 U.S. 249 (1999), and *Lopez-Soto v. Hawayek*, 175 F.3d 170 (1st Cir. 1999) cases and believe that they do not pose any barrier to the position we are taking in this rule.

In *Roberts*, the Court addressed the issue of whether an individual must prove that a hospital acted with an improper motive in failing to stabilize that individual and concluded that the stabilization provision found in the Social Security Act at section 1867(b)(1) contained no such requirement. The Court did not address the issue of when a hospital’s EMTALA obligation to stabilize an individual ends. However, the *Lopez-Soto* case did address the stabilization issue, and in that case the court concluded that a hospital has an obligation to stabilize an individual with an emergency medical condition

before arranging a transfer of that person to another facility, regardless of whether the individual presented to the emergency department with the emergency medical condition or elsewhere at the hospital.

Because the court in *Lopez-Soto* was not clear about the inpatient status of the individual, a baby, it is not clear to us whether this decision is necessarily inconsistent with the view of the statute we are taking in this final rule. For example, if the baby in *Lopez-Soto* was not an inpatient at the time it presented with an emergency medical condition, then we would agree that the hospital, under this final rule, would be obligated to respond to the baby’s condition as if it had been initially presented to the hospital’s emergency department. On the other hand, if the baby were, in fact, an inpatient at the time the emergency first presented itself to hospital staff, the court’s holding would be inconsistent with the views adopted in this final rule, and, to this extent, we would disagree with the court’s conclusion. As we have explained elsewhere in this preamble, we believe such a conclusion oversteps the requirement of the statute that limits its scope to individuals who have presented themselves to a hospital *prior* to the time they become an inpatient of that facility. However, this is not to say that hospitals are without patient obligations in these cases. Hospitals clearly owe a duty to inpatients, but those obligations derive from the Medicare hospital CoPs at section 1861(e) of the Act and the implementing regulations at 42 CFR Part 482, not from EMTALA. In addition, as we have stated, if it is discovered upon investigation of a specific situation that a hospital did not admit an individual in good faith with the intention of providing treatment, but instead used the inpatient admission merely as a means to avoid EMTALA requirements, then liability under EMTALA may attach.

Comment: One commenter who did not support our proposed policy on the nonapplicability of EMTALA to admitted elective patients requested that we clarify the EMTALA obligations to such individuals who experience an emergency after being admitted to the hospital. Specifically, the commenter was concerned about the transfer of such an unstable individual to a hospital that has special capabilities to treat the individual.

Response: Since EMTALA is not triggered for admitted elective patients who experience an emergency during the inpatient admission, (except in limited circumstances), the EMTALA transfer requirements would not apply