

to the transfer of such an individual to another hospital.

Comment: One commenter stated that our language in the preamble that discusses the applicability of EMTALA to “admitted emergency patients” (67 FR 31476) appears to apply only to patients admitted via the emergency department, whereas the language in the proposed regulatory text at § 489.24(d)(2)(ii) states that EMTALA applies to inpatient care “if a hospital admits an individual with unstable emergency medical condition for stabilizing treatment.” The commenter requested us to clarify whether EMTALA applies in the inpatient setting but only to an individual admitted via the dedicated emergency department or whether it applies to any individual who has an emergency medical condition.

Response: As stated earlier, our decision in this final rule is that EMTALA no longer applies to any individual who is admitted as an inpatient (except in limited circumstances of circumvention.)

Comment: One commenter recommended that the definition of “inpatient” for purposes of EMTALA would specifically include patients who have been admitted to the hospital but, due to bed availability, are being “boarded” and physically located in the dedicated emergency department.

Another commenter asked us to clarify whether EMTALA would apply to the stabilization of individuals with emergency medical conditions while awaiting admission in the dedicated emergency department or to an unstable patient who is being “held” or “boarded” in the operating room or angiography suite prior to movement to an inpatient bed.

Response: As we have stated, EMTALA applies to an individual who presents to the hospital with an emergency medical condition. If such a condition is found when the individual is screened, the hospital must provide stabilizing treatment, even if the individual is awaiting admission in the dedicated emergency department. Once the individual has been stabilized, the EMTALA obligations end.

In response to the issue about the definition of “inpatient” for purposes of EMTALA, we are revising our proposed definition of “patient” under § 489.24(b) that specified that an inpatient is one who is “receiving inpatient hospital services as defined in § 409.10(b).” Upon further consideration, we believe it would be more helpful to adopt the definition of “inpatient” from Section 210 of the Medicare Hospital Manual (CMS Publication Number 10 (1989)),

which is a well-utilized definition in the Medicare program for purposes of Medicare payment. Under that section, an “inpatient is a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. Generally a person is considered an inpatient if formally admitted as an inpatient with the expectation that he [or she] will remain at least overnight and occupy a bed even though it later develops that he [or she] can be discharged or transferred to another hospital and does not actually use a hospital bed overnight.” We believe adopting such a definition for EMTALA purposes would provide further guidance in determining who is an inpatient.

To respond specifically to the commenter, individuals who are “boarded” and admitted in the dedicated emergency department would be determined to be inpatients for purposes of EMTALA if, generally, they have been admitted by the hospital with the expectation that they will remain at least overnight and occupy beds in the hospital. We believe such an expectation would be documented based on the information in the individual’s medical record.

Comment: One commenter compared the proposed regulatory language regarding the application of EMTALA to inpatients in proposed § 489.24(d)(2)(i) to the language in proposed § 489.24(d)(2)(ii). The commenter stated that although paragraph (d)(2)(i) requires the hospital to have *found* the emergency medical condition and have *actual knowledge* that the condition exists, before it can incur a duty to stabilize under EMTALA, paragraph (d)(2)(ii) does not require that the hospital be aware that the individual had an emergency medical condition at the time of admission.

Response: Proposed § 489.24(d)(2) was based on the proposed policy that EMTALA applied to an individual who was admitted as an inpatient. In this final rule, we are revising our policy to state that EMTALA obligations end toward an individual upon inpatient admission, regardless of the stability of the individual (except in limited circumstances of circumvention). Because we are revising the regulation text to reflect this revised policy, the above comment on proposed § 489.24(d)(2) is no longer relevant.

Comment: One commenter suggested that the final rule should clarify the application of the psychiatric specific definitions of “stable for transfer” and “stable for discharge” in the State Operations Manual.

Response: In the 1998 State Operations Manual at Tag A407 on page V-9, we state: “for purposes of transferring a patient from one facility to a second facility for *psychiatric conditions*, the patient is considered to be stable when he/she is protected and prevented from injuring himself/herself or others. For purposes of discharging a patient (other than for the purpose of transfer from one facility to a second facility), for psychiatric conditions, the patient is considered to be stable when he/she is no longer considered to be a threat to him/herself or to others.” However, we note that, generally, psychiatric patients with emergency medical conditions are treated no differently for purposes of EMTALA than any other individual who presents to the hospital with an emergency medical condition. We intend to address the issue of treatment of individuals with psychiatric conditions for purposes of EMTALA in future operating instructions for our State surveyors.

Comment: The commenter also suggested that the final rule clarify that any retrospective review of a physician’s determination that an individual is stable will only be based upon the information and clinical data readily available at the time of such determination.

Response: We will keep in mind the commenter’s suggestion about retrospective review when we develop future operating instructions for our State surveyors. In addition, the commenter has stated our current position as specified in the 1998 State Operations Manual, page V-9: “the purpose of the professional medical review (physician review) is to provide peer review using information available to the hospital at the time the alleged violation took place.”

Comment: One commenter asked for clarification on the point of whether EMTALA should apply when an ambulance delivers an individual through the dedicated emergency department as a direct admit.

Response: As we have clarified above, whenever there is a direct admission of a particular individual as an inpatient, EMTALA no longer applies.

C. Provisions of the Final Rule

In this final rule, we are adopting as final the proposed definition of “patient” under § 489.24(b) with modifications. We are further clarifying what “outpatients” are not subject to the EMTALA obligations.

We also are providing that a hospital’s obligations under EMTALA end once an individual is admitted for inpatient care. As explained above, we believe