

that this is the appropriate policy because existing hospital CoPs provide adequate, and in some cases, superior protection to inpatients. (See section XIII. of this preamble for a detailed discussion of regarding the hospital CoPs). In addition, numerous courts have held that EMTALA obligations end upon inpatient admission. At least two courts ruled on the identical issue after we published our May 9, 2002 proposed rule.

We also are adding language to adopt our established definition of "inpatient" in section 210 of the Medicare Hospital Manual (CMS Publication No. 10) who are also not subject to the EMTALA obligations. In addition, we are adopting as final the proposed § 489.24(d)(2) with modifications. We are clarifying that a hospital is required to provide care to its inpatients in accordance with the Medicare hospital CoPs.

X. Applicability of EMTALA to Provider-Based Entities (§§ 413.65(g)(1), 482.12(f), 489.24(b), and 489.24(i))

On April 7, 2000, we published a final rule specifying the criteria that must be met for a determination regarding provider-based status (65 FR 18504). The regulations in that final rule were subsequently revised to incorporate changes mandated by section 404 of Public Law 106–554 (66 FR 59856, November 30, 2001). However, those revisions did not substantively affect hospitals' EMTALA obligations with respect to off-campus departments.

A. Applicability of EMTALA to Off-Campus Hospital Departments (§§ 489.24(b) and (i) and § 413.65(g)(1))

1. Background

In the April 7, 2000 final rule (65 FR 18504), we clarified the applicability of EMTALA to hospital departments not located on the main provider campus. At that time, we revised § 489.24 to include a new paragraph (i) to specify the antidumping obligations of hospitals with respect to individuals who come to off-campus hospital departments for the examination or treatment of a potential emergency medical condition. As explained in the preamble to the April 7, 2000 final rule, we made this change because we believed it was consistent with the intent of section 1867 of the Act to protect individuals who present on hospital property (including off-campus hospital property) for emergency medical treatment. Since publication of the April 7, 2000 final rule, it has become clear that many hospitals and physicians continue to have significant concerns with our

policy on the applicability of EMTALA to these off-campus locations.

2. Provisions of the Proposed Rule

After further consideration, in the May 9, 2002 proposed rule (67 FR 31476), we proposed to clarify the scope of EMTALA's applicability in this scenario to those off-campus departments that are treated by Medicare under § 413.65(b) to be departments of the hospital, and that are equipped and staffed areas that are used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions. That is, we proposed to narrow the applicability of EMTALA to only those off-campus departments that are "dedicated emergency departments" as defined in proposed revised § 489.24(b).

As proposed, this definition would include such departments, whether or not the words "emergency room" or "emergency department" were used by the hospital to identify the departments. The definition would also be interpreted to encompass those off-campus hospital departments that would be perceived by an individual as appropriate places to go for emergency care. Therefore, we proposed to revise the definition of "Hospital with an emergency department" at § 489.24(b) to account for these off-campus dedicated emergency departments and also to amend the definition of "Comes to the emergency department" at § 489.24(b) to include this same language. We believe these proposed changes would enhance the quality of emergency care by facilitating the prompt delivery of emergency care in those cases, thus permitting individuals to be referred to nearby facilities with the capacity to offer appropriate emergency care.

In general, we expect that off-campus departments that meet the proposed definitions stated above would in practice be functioning as "off-campus emergency departments." Therefore, we believe it is reasonable to expect the hospital to assume, with respect to these off-campus departments, all EMTALA obligations that the hospital must assume with respect to the main hospital campus emergency department. For instance, the screening and stabilization or transfer requirements described in section V.K.1. of the preamble of the May 9, 2002 proposed rule ("Background") would extend to the off-campus emergency departments, as well as to any such departments on the main hospital campus.

In conjunction with this proposed change in the extent of EMTALA applicability with respect to off-campus

facilities, we also proposed to delete all of existing § 489.24(i), which, as noted above, was established in the April 7, 2000 final rule. We proposed to delete this paragraph in its entirety because its primary purpose is to describe a hospital's EMTALA obligations with respect to patients presenting to off-campus departments that do not routinely provide emergency care. Under the proposals outlined above, however, a hospital would have no EMTALA obligation with respect to individuals presenting to such departments. Therefore, it would no longer be necessary to impose the requirements in existing § 489.24(i). Even though off-campus provider-based departments that do not routinely offer services for emergency medical conditions would not be subject to EMTALA, some individuals may occasionally come to them to seek emergency care. Under such circumstances, we believe it would be appropriate for the department to call an emergency medical service (EMS) if it is incapable of treating the patient, and to furnish whatever assistance it can to the individual while awaiting the arrival of EMS personnel. Consistent with the hospital's obligation to the community and similar to the Medicare hospital CoP under § 482.12(f)(2) that apply to hospitals that do not provide emergency services, we would expect the hospital to have appropriate protocols in place for dealing with individuals who come to off-campus nonemergency facilities to seek emergency care.

To clarify a hospital's responsibility in this regard, in the May 9, 2002 proposed rule, we proposed to revise § 482.12(f) by adding a new paragraph (3) to state that if emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff of the hospital has written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate. (We note that, in a separate document (62 FR 66758, December 16, 1997), we proposed to relocate the existing § 482.12(f) requirement to a new section of Part 482. The change to § 482.12(f) in this final rule will be taken into account in finalizing the December 16, 1997 proposal.) However, the hospital would not incur an EMTALA obligation with respect to the individual.

In summary, we proposed in existing § 489.24(b) to revise the definitions of "comes to the emergency department" and "hospital with an emergency