Joint Statement of
American College of Emergency Physicians
and
Kaiser Permanente
on
Federal Standards for Coverage of Emergency Medical Services

Washington – The American College of Emergency Physicians (ACEP), the largest medical specialty organization representing emergency physicians, and Kaiser Permanente, the nation's largest health maintenance organization, have agreed to seek federal standards for health benefits coverage of emergency medical services.

The federal standards endorsed today by Kaiser Permanente and ACEP will help to ensure that patients enrolled in health not be denied coverage.

These standards will also greatly improve the quality of care delivered to patients in the emergency department by promoting a collaborative approach between emergency physicians and health plans.

ACEP and Kaiser Permanente believe that federal standards are needed to:

(1) assure appropriate access to emergency medical services;
(2) protect patients from incurring unexpected costs from the provision of uncovered services;
(3) ensure greater continuity of care and more efficient care for the patient by involving the patient's health plan in the treatment plan; and
(4) reduce the administrative costs to hospitals, emergency physicians, and health plans that result from coverage disputes.

Kaiser Permanente and ACEP endorse the following specific federal standards:

(1) Health plans should cover medically necessary emergency services without requiring the health plan member to obtain preauthorization;

(2) Health plans should cover emergency services provided to a health plan member in a hospital emergency department, if the member presents with a condition that a prudent layperson, possessing an average knowledge of health and medicine, could reasonably expect to result in serious impairment to the member's health. This is the "prudent layperson" standard.

(3) Health plans should not be required to provide coverage for services for health plan members who do not meet the "prudent layperson" standard.

(4) Emergency physicians should be required to notify the health plan within 30 minutes after the health plan member is stabilized to obtain authorization for any promptly needed services; the health plan must respond to the request for authorization for any recommended services within 30 minutes. If the emergency physician and the health plan cannot agree on a course of post-stabilization treatment, the health plan should be required to immediately arrange for an alternate plan of treatment for the health plan member.

The standards advocated by Kaiser Permanente and ACEP are based upon the successful Kaiser Permanente Emergency Prospective Review and Critical Care Transport Program which currently operates in a number of Kaiser Permanente regions, including southern California, Colorado, and Hawaii.

The standards are also similar to standards outlined in H.R. 2011, a bill introduced in Congress by Rep. Ben Cardin and supported by 140 Members of the House.

The Kaiser Permanente program reduces the costs of providing emergency care by providing timely consultation to emergency physicians. Timely consultations with health plan physicians who know the patient's history can significantly reduce the cost of emergency department visits by providing valuable information which may reduce the need for ancillary testing.

Kaiser Permanente is the nation's largest non-profit health maintenance organization (HMO). Founded in 1945, the group-practice HMO is headquartered in Oakland, California. Kaiser Permanente serves the health care needs of 7.4 million voluntarily-enrolled members in 17 states and the District of Columbia. Today it encompasses Kaiser Foundation Health Plan, Inc.; Kaiser Foundation Hospitals; and the Permanente Medical Groups. Nationwide, they include more than 75,000 technical, administrative, and clerical employees and 9,300 physicians representing all specialties.

ACEP is a national medical specialty society representing more than 18,500 physicians who specialize in emergency medicine. The College is dedicated to improving the quality of emergency care through continuing education, research and public education. Headquartered in Dallas, ACEP has 53 chapters representing each state as well as the District of Columbia, Puerto Rico and Government Services.

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American College of Emergency Physicians and Kaiser Permanente Joint Statement of Principles for Federal Legislative Requirements for Health Plan Coverage of Emergency Medical Services August 19, 1996

The American College of Emergency Physicians (ACEP) and Kaiser Permanente endorse this joint Statement of Principles regarding health plan coverage of emergency medical services.

ACEP and Kaiser Permanente commit to pursue federal legislation that will require all health plans to implement the standards outlined in this Joint Statement of Principles. ACEP and Kaiser Permanente agree that coverage of emergency services is an important part of the overall protection that people with health care coverage rely upon, and is of considerable consumer concern today. Federal legislation can help to ensure that emergency care coverage rules are predictable for consumers so that they are not subject to unexpected medical costs, and can help to promote quality health care by requiring health plans and emergency physicians to work together to coordinate any necessary follow-up care after an emergency situation has been stabilized.

With these goals in mind,

1. ACEP and Kaiser Permanente support federal legislation that would require all health plans to cover appropriate emergency services consistent with applicable state and federal laws without preauthorization from the health plan. Federal legislation should require coverage for those emergency services required to evaluate the plan enrollee when the enrollee meets the prudent layperson standard and, if necessary, to stabilize the enrollee consistent with applicable state and federal laws.

2. ACEP and Kaiser Permanente support federal legislation that would require all health plans to provide coverage for emergency services provided to a health plan enrollee who presents to a participating emergency department with a condition, including severe pain, that a prudent layperson possessing an average knowledge of health and medicine could reasonably expect to result in serious impairment to the enrollee's health.

3. ACEP and Kaiser Permanente agree that federal legislation should not require coverage for services provided to plan enrollees who do not meet the prudent layperson standard.

4. Coverage for medically necessary emergency services up to the point of stabilization should be provided to any enrollee who presents to a non-participating emergency department with a condition that meets the prudent layperson standard provided that:

(A) due to circumstances beyond the enrollee's control, the enrollee was unable to go to a participating emergency department in a timely fashion without serious impairment to the enrollee's health, or

(B) a prudent layperson possessing an average knowledge of health and medicine would have reasonably believed that he or she would be unable to go to a participating emergency department in a timely fashion without serious impairment to the enrollee's health.

5. ACEP and Kaiser Permanente agree that federal legislation should only require coverage for those emergency services required to evaluate and stabilize, if necessary, the enrollee, consistent with applicable state and federal laws. For these services, no prior authorization should be necessary from the health plan.

6. ACEP and Kaiser Permanente agree that for any services provided after the patient is stabilized:

(A) the emergency physician must contact the health plan in a timely fashion (as described in subparagraph (C) below) to seek prior authorization for any additional services beyond stabilization which may be promptly required or are needed to effect a safe transfer of the patient;

(B) a health plan must immediately arrange for an alternate plan of treatment for the enrollee in the event a non-participating emergency provider and plan cannot come to agreement on which services are necessary beyond those immediately needed to stabilize the enrollee consistent with state and federal laws;

(C) a health plan must provide coverage for any promptly needed items or services not necessary to stabilize the enrollee but that are determined to be medically necessary if the emergency physician (I) after a documented good faith effort, is unable to reach the enrollee's health plan, (a) within 30 minutes from the initial examination of the enrollee, or (b) if the enrollee needs to be stabilized, within 30 minutes of stabilization, or (II) has successfully contacted the plan and has not had a denial from the plan within 30 minutes of contacting the plan unless the plan can document that it had made a good faith effort but was unable to reach the emergency physician within 30 minutes after receiving the request for authorization.

7. ACEP and Kaiser Permanente agree that federal legislation should not prohibit health plans from imposing reasonable differential cost-sharing requirements should a health plan enrollee choose to go to an emergency department rather than another setting, including using a non-participating emergency department rather than a participating emergency department available to the enrollee.

8. Notwithstanding paragraph 7, ACEP and Kaiser Permanente agree that different cost-sharing requirements should not apply when an enrollee presents to a non-participating emergency department rather than a participating emergency department if:

(A) due to circumstances beyond the enrollee's control, the enrollee was unable to arrive at a participating emergency's life or health, or

(B) a prudent layperson possessing an average knowledge of health and medicine would have reasonably believed that he or she was unable to arrive at a participating emergency department in a timely fashion without serious impairment to the enrollee's life or health.

9. ACEP and Kaiser Permanente support federal legislation that requires health plans to provide education to enrollees on: (1) coverage of emergency medical services, (2) the appropriate use of emergency services, including the use of the 911 system and other telephone access systems utilized to access pre-hospital emergency services, (3) any cost sharing provisions for emergency medical services; and (4) the processes and procedures for obtaining emergency medical services, so that enrollees are familiar with the location of in-plan emergency departments and

with the location and availability of other in-plan settings at which they could receive medical care.

10. ACEP and Kaiser Permanente support the preemption of any state laws which define the obligation of health plans with respect to coverage of emergency care and are enacted after the date of enactment of the federal bill.

ACEP and Kaiser Permanente support federal preemption of state laws which define the obligation of health plans with respect to coverage of emergency care enacted prior to the date of enactment of the federal law to the extent that federal preemption does not result in lesser protection for consumers within individual states.

If the Governor of a state that had enacted such legislation demonstrates to the Secretary of Health and Human Services that federal preemption of the state law will lessen consumer protections for consumers within the state, then the Secretary shall rule that the state law will continue to apply.

11. ACEP and Kaiser Permanente recognize that some health plans will need "lead time" to comply with the new federal requirements and support legislation that establishes a realistic effective date to accommodate this concern.

12. ACEP and Kaiser Permanente pledge to begin development of joint educational materials for Kaiser Permanente enrollees on how to appropriately access and utilize emergency medical services within the Kaiser Permanente Health Care System.

Bob Graham
Florida

FAX TRANSMITTAL SHEET

TO: Carol Rasco	PHONE:
FROM: Michelle Wallace	PHONE: 224-3681
DATE: December 22, 1995	TIME: 4:00
NUMBER OF PAGES: 3	524 Hart Senate Office Building, Washington, D.C. 20510

COMMENTS:

United States Senate

WASHINGTON, D.C. 20510

December 21, 1995

The Honorable Bill Clinton
President
The White House
1600 Pennsylvania Avenue, Northwest
Washington, D.C. 20500,

Dear Mr. President:

We write to you to urge your strong support for adoption of the prudent layperson definition of emergency for the Medicare program. It is our desire that this issue be added to the Administration's list of priority items as you undertake negotiations with the Republican Congressional Leadership on the final reconciliation package.

The prudent layperson definition of emergency ensures that those who receive health care through Medicare HMOs are not denied emergency room treatment. This definition was offered as a Graham amendment unanimously adopted by the Senate during its floor consideration of the reconciliation package. The prudent layperson definition of emergency is the principle provision of legislation introduced earlier this year by Representative Cardin (D-MD) and Senator Mikulski (D-MD). The Cardin bill, H.R. 2011, currently has 58 Democratic cosponsors. Despite strong bipartisan support, the conference committee chose to strip this important patient protection for Medicare beneficiaries for the conference report.

The prudent layperson definition is a needed and necessary patient protection provision that protects senior citizens who enroll in Medicare HMOs. The Graham amendment would have ensured that Medicare beneficiaries who seek emergency care are not denied coverage by participating HMOs when it is later determined that their condition was not life-threatening. Unfortunately, the language agreed to by the conference committee would allow this practice to continue. An independent study advised that unless we adopt the prudent layperson definition of emergency, Medicare beneficiaries will be subjected to unexpected out-of-pocket expenses which sometimes can be catastrophic.

We would urge the Administration to support this provision because it protects beneficiaries and health care providers. Mr. President, a senior citizen who develops sudden and severe chest pain, goes to an emergency department, and, upon evaluation, is

found not to be experiencing a heart attack could be denied Medicare reimbursement. This is bad for the beneficiaries and unfair to providers.

A broad coalition supports the prudent layperson definition including the American College of Emergency Physicians, the Emergency Nurses Association, the Coalition of American Trauma Care, the International Association of Fire Fighters, the National Association of EMS Physicians, the National Association of Emergency Medical Technicians, the American Heart Association, the American Academy of Pediatrics, Consumers Union, Citizen Action, Public Citizen, and the National Committee to Preserve Social Security and Medicare. It is pro-consumer, pro-senior, and a vital improvement over current regulation.

Again, Mr. President, we urge you to support inclusion of the prudent layperson definition of emergency in any final reconciliation compromise that is concluded in your negotiations with the Congress.

Sincerely,

Bob Graham

Paul Simon

Herb Kohl

Dave Durenberger

Jay Rockefeller

Paul D. Wellstone

Barbara A. Mikulski

Barbara Boxer

MANAGED CARE COVERAGE OF EMERGENCY SERVICES:

Conference report (Section 1852(d)):

- Under "Benefits and Beneficiary Protections" required of MedicarePlus plans, the conference bill requires plans to cover emergency services by non-plan providers without prior authorization by the plan.

- "Emergency services" are defined as covered inpatient and outpatient services:

  - o that are needed immediately because of an injury or sudden illness;

  - o that are furnished by an appropriate source; and

  - o where the time required to reach an in-plan provider would pose risk of serious damage to the patient's health.

NOTE: This definition closely parallels existing regulations and statute defining obligations of Medicare-contracted HMOs and CMPs. (See 42 CFR 417.401 and SSA Sec. 1876(c)(4)(B).) Unlike the "prudent layperson" definition (below), it does not specify whose judgement is determinative.

"Blue Dog" proposal (Sec. 1853(b)):

- Under "Patient Protection Standards" required of MedicareChoice organizations, the "Blue Dog" bill requires plans to cover emergency services by non-plan providers without prior authorization by the plan.

- "Emergency services" are defined as services provided in a hospital emergency department (including ancillary service routinely available to such department), as needed to evaluate and stabilize an emergency medical condition.

  NOTE: this appears to parallel the basic requirement of SSA Sec. 1867 (the federal "anti-dumping" law), which mandates evaluation of all persons seeking emergency care and stabilization (or appropriate transfer) of any emergency medical condition found to exist.

- "Emergency medical condition" is defined as a condition of sudden onset and sufficient severity that a prudent layperson with average knowledge of health and medicine could reasonably expect it to result in serious jeopardy to health, or serious bodily impairment or dysfunction, absent immediate medical care

  NOTE: this is the "prudent layperson" definition proposed by the American College of Emergency Physicians (ACEP).