AMERICAN COLLEGE OF EMERGENCY PHYSICIANS
ISSUE PAPER

ISSUE:

What version of the prudent layperson standard should chapters use in their legislative initiatives?

ACEP POSITION:

The National Association of Insurance Commissioners (NAIC) adopts model state legislation and regulations relating to virtually all areas of insurance. In the health care arena, state legislators and regulators regularly use NAIC models, either by adopting them verbatim or by using them as a starting point for state legislation and/or regulations.

In 1996, NAIC’s Managed Care Provider Network Adequacy and Contracting Model Act (Model Act) adopted a prudent layperson standard. This step reflected the recognition of providing coverage for emergency services based upon presenting symptoms rather than the ultimate diagnosis. The Model Act is slightly different than the prudent layperson standard in the Access to Emergency Services Act now pending before the 107th Congress. The NAIC model reflects the appropriate "concept" of a prudent layperson standard that applies to patients with presenting symptoms rather than subsequent final diagnosis to the emergency department. However the language in the NAIC model law is not the officially sanctioned ACEP prudent layperson language as reflected in the definition provided for in the Congressional bill. The Balanced Budget Act of 1997 that implemented the prudent layperson standard for Medicaid and Medicare recipients, should reinforce utilizing the Congressional language standard as the model for all health plans. However, until Congress enacts the prudent layperson standard, chapters continue to urge state legislators and regulators considering the NAIC model law to substitute the definition of emergency condition and emergency services contained in the Congressional bill from the 107th Congress.

CURRENT ACTION/STATUS:

NAIC health system reform activities are the first effort by the organization to provide states with comprehensive model health system reform legislation on a wide range of issues. The NAIC model laws, including the Utilization Review Model Act that includes the concept of prudent layperson for coverage of emergency services, is being accepted by many state insurance commissioners and state lawmakers.

As of February 2002, the following 32 states and the District of Columbia have adopted a prudent layperson standard of access to emergency medical care:

*Alabama Bd. of Health Chpt. 420-5-6 April, 1999
Arkansas SB 671 April 19, 1995
*Colorado Ins. Reg 4.2.17 July 1, 1997
Connecticut HB 6883 May 21, 1997
Delaware HB366 April, 1998
District of Columbia Council Action May, 1998
Georgia HB 1575 April 8, 1996
Hawaii SB 2037 July 21, 1998
Idaho SB1150 July 1, 1997
Illinois SB 251 January 1, 2000
In recent years, Arizona, California, Florida, and Michigan also enacted effective laws similar to prudent layperson that focus on a patient’s presenting symptoms rather than final diagnosis when determining whether to pay emergency medical care claims.

**KEY PLAYERS:**

- State Insurance Commissioners and Health Departments
- State Departments of Health and Human Services
- Centers for Medicare/Medicaid Services (CMS)
- State Medicaid Directors
- American Medical Association and Allied State Societies and Associations
- American Hospital Association and Affiliated State Organizations
- State Congressional Delegations
- State Legislatures
- Governor’s Office (Health Policy Advisor)
- State Attorneys General
- Managed Care Organizations
- State and Local Media
- Other Medical Specialty Organizations

**POLITICAL CONSIDERATIONS:**

Efforts are currently under way in Congress to establish a national standard of access to emergency medical care. If this effort were approved, a uniform definition of an emergency medical condition based upon the prudent layperson standard adopted by the State of Maryland...
would become the uniform national standard. When Congress passed the Balanced Budget Act of 1997, it extended this standard of access to emergency medical care to all Medicaid and Medicare recipients. In 1999, President Clinton issued a directive covering all federal employees under the prudent layperson standard. The outlook for passage of comprehensive patient protection legislation that includes prudent layperson looks uncertain in 2002. Until this Congressional measure passes and extends the prudent layperson standard protection to all health care and self-insured plans, the NAIC model law is one on which many state legislators and regulators will continue to rely. The challenge facing chapters pursuing state passage of prudent layperson is to continue to press for adoption of the Maryland prudent layperson standard language.

**TIMING:**

Immediate and ongoing. Many states rely heavily on NAIC model laws with respect to insurance related issues. ACEP members should be encouraged to urge state legislators and appropriate state regulatory bodies to adopt the College’s definition when possible and build on recent successes in establishing a prudent layperson standard of access for emergency medical care for Medicaid and Medicare patients in the Balanced Budget Act of 1997.

**NEXT STEPS:**

The NAIC Model Law provides a framework in which many state insurance commissioners and state legislators feel comfortable in developing uniform standards for health system reform activities. Until Congress passes a national standard of access to emergency medical services, chapters will need to continue to work with the NAIC model laws. However, chapters should continue to persuade state leaders to adopt the Maryland prudent layperson standard language that is preferable to the NAIC model.

Prepared by: Ken King, CAE, Director
Chapter and State Relations

Date: March 2002

Distribution list: Board of Directors
Council Officers
State Legislative/Regulatory Committee