



CASE STUDY

HOW PRUDENT LAYPERSON LEGISLATIVE ADVOCACY HELPED BUILD A STRONGER CHAPTER

Issue

In 1993, Maryland became the first state to enact the prudent layperson standard of access to emergency medical care. Since then, state lawmakers have continued to examine how managed care plans should reimburse for emergency care services. Thirty-two states and the District of Columbia have now enacted the standard prohibiting prior authorization, and addressing the issue of emergency care delivered by non-participating and out-of-area providers. The impact of the struggle to enact the prudent layperson standard has extended beyond the issue itself and has become a catalyst for renewed membership activity and interest in Kentucky Chapter of ACEP (KACEP). How KACEP used the prudent layperson legislative experience to rebuild chapter vitality is worthy of review.

ACEP Position

“Emergency medical services are those health care services provided to evaluate and treat medical conditions of recent onset and severity that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that urgent and/or unscheduled medical care is required.” (Adopted in 1982; revised in 1994; reaffirmed in 1998 by the ACEP Board of Directors.)

Background Information

In early 1997, the Kentucky ACEP was a small chapter comprised almost entirely of members of the emergency medicine faculty of the University of Louisville. The main activity of the chapter was to provide several educational programs each year. The chapter had no government

affairs committee, lobbyist, or political action committee activity.

By contrast, the Kentucky Medical Association (KMA) was a strong organization with an active and well-organized state legislative committee, and with an experienced lobby staff that employed three full time lobbyists. The KMA is well versed in coalition building and the legislative process and works closely with several physicians who serve in the state legislature. In 1998, the KMA worked with a physician legislator, State Representative Bob Deweese, MD, to introduce sweeping HMO reform legislation that included the prudent layperson standard of access to emergency medical care. Since the KMA's bill included the prudent layperson standard, the effort to pass the legislation became a rallying point for KACEP and ultimately, the chapter became a true statewide organization that represented all emergency physicians.

Legislative History in Kentucky

The Kentucky General Assembly is a part-time legislature. It meets every other year for 60 days beginning in January of even-numbered years. By the end of 1997, the KMA was ready with a bill that would provide comprehensive Health Maintenance Organization (HMO) patient protections. The KMA's State Legislative Committee developed a working coalition of groups, both professional and nonprofessional; to create a bill that would address a broad range of patient concerns about managed care. Its primary interest, however, was not the prudent layperson standard but rather "point of service" guarantees.

Responsibility for promoting the prudent layperson section of the bill really fell on Kentucky chapter members. Chapter leaders forged a very close working relationship with the KMA and coordinated their effort with national ACEP to take advantage of the services and resources that

can be used to enact the prudent layperson law. House Bill 315, which included the prudent layperson standard, passed the 1998 Kentucky General Assembly and became law.

Arguments in Favor of This Position

It is in the interest of the public's health that individuals who have self-perceived medical emergencies have ready access to emergency medical services. Patients need this access without being intimidated by the fear that their HMO may deny reimbursement should the ED visit ultimately turn out to not meet the HMOs definition of an emergency.

Since 1993, prudent layperson laws mandating coverage of emergency department have been enacted in 32 states and the District of Columbia. In addition, several other states—Arizona, California, Florida, and Michigan—have adopted similar reimbursement laws. In states that have passed the standard, the laws have achieved significant payment protections for providers and patients. The laws have effectively reduced the number of payment denials for initial screening and stabilization of cases that turned out to be non-emergency, and have simplified reimbursement procedures for both health plans and providers.

Early treatment for most medical conditions is very cost-effective and actually saves money by avoiding more expensive and comprehensive treatment later. Patients should not be expected or required to make astute medical judgements concerning the seriousness of their symptoms. The prudent layperson standard is not only reasonable but also cost effective, universally applicable, and appropriate for the delivery of health care to consumers.

Arguments Against This Position

Arguments against adoption of the prudent layperson standard include:

- Retrospective denial of payment for emergency medical care is rare and does not merit legislative intervention with more mandated coverages.
- Too much routine and nonurgent care is already provided in “expensive” emergency department settings and insurers may show examples of high emergency department charges for what was ultimately diagnosed as a “routine” or nonurgent medical condition.
- Insurance lobbyists may ask legislators to recall their own experiences with “outrageously expensive” bills received after they or someone in their family last used emergency department services.
- Managed care is the last hope for curbing excessive health care costs for employers and denying payment for “unnecessary” treatment is essential to any managed care plan. Otherwise, costs can never be contained.
- Patients will use emergency departments for “convenience care” if allowed unregulated access to emergency care; this will result in higher insurance premiums and ultimately affect the affordability of insurance and access to care for all citizens of the state.

Potential Proponent Organizations

- State medical societies
- Emergency nurses
- State hospital associations
- Emergency medical services organizations
- Consumer health advocacy groups
- American Association of Retired Persons (AARP) and other senior advocacy organizations
- Advocates for the uninsured and underinsured

Potential Opponent Organizations

- The insurance and HMO industries
- Managed Care Plans
- Some employer/business organizations such as local and state chambers of commerce.

Keys to Kentucky’s Legislative Success

KACEP’s success in passing prudent layperson in Kentucky required a strong and timely advocacy effort. Close collaboration with KMA’s lobby team was essential to the chapter’s ultimate success. Also, finding a physician legislative “champion” and building a strategic partnership with other organizations interested in access to care cannot be overemphasized.

The chapter’s partnership with the KMA to enact comprehensive patient protection united emergency physicians around a common issue that was important to patients. It also forced members to work together for a common goal despite some significant philosophical differences about emergency medicine.

In a larger sense, our chapter’s legislative advocacy effort in pursuit of a prudent layperson law helped rebuild the chapter. In 1999, a KACEP member was appointed to the KMA State Legislative Committee and was able to actively participate in the preparation of the medical society’s legislative priorities for the 2000 session. That session proved to be one of the most successful ever for health legislation in Kentucky. In addition to enactment of a strong prompt payment law, legislation creating an independent external review process for denied medical claims, banning of mandatory hospitalists, establishing a 0.08 blood alcohol concentration legal limit for motorists, and requiring HMO medical directors to be licensed in Kentucky were passed by overwhelming majorities in both houses of the state legislature.

Although KACEP cannot claim exclusive credit for passage of prudent layperson, the chapter was an important part of the health care reform coalition that enacted important new patient protections in our state. KACEP members learned an important lesson in how the legislative process works and how to participate effectively. “We now have a chapter

political action committee and made donations to legislative candidates in the 2000 election for the first time. We are also beginning to be seen by the media as an authority on health care issues and now receive calls for information and interviews on a regular basis,” said Barbara Reynolds, MD, FACEP, Kentucky ACEP President.

For more information on this issue,
please contact Craig Price in the State Legislative Office
at 800/798-1822, ext. 3236
e-mail: cprice@acep.org

Barbara J. Reynolds, MD, FACEP
Chapter President
Kentucky Chapter ACEP
502/227-9278
e-mail: bjreyn@quixnet.net