Prudent Layperson Fact Sheet

Overview	In 1986, Congress enacted the Emergency Medical Treatment and Labor Act (EMTALA) governing the provision and payment of emergency medical services in Medicare participating hospitals. In 1994 a revision to the act added the "prudent layperson" definition as a standard for evaluating whether a patient has an emergency condition. The Balanced Budget Act of 1997 established the "prudent layperson" standard for Medicaid effective October 1997 and the same standard became effective for Medicare in May 1998. The Department of Veterans Affairs adopted the standard in November 1999 when the Veterans Millennium Health Care and Benefits Act prescribed the "prudent layperson" standard for evaluating emergency care as one of the criteria for authorization and payment of emergency treatment for non-service-connected conditions. The prudent layperson definition of an emergency medical condition commonly in practice is any medical or behavioral condition of recent onset and severity, including but not limited to severe pain, that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to obtain immediate medical care could result in placing the patient's health in serious jeopardy, cause serious impairment to bodily functions, serious dysfunction of any bodily organ or part, or in the case of a behavioral condition placing the health of such person or others in serious jeopardy. This prudent layperson definition of emergency medical condition focuses on the patient's presenting symptoms rather than the final diagnosis when determining whether to pay emergency medical claims. Note: Under the prudent layperson standard payment for emergency care is made for the initial evaluation and examination based upon the nature of the patient's presenting complaint. Payment may be made for additional medical services until the condition is no longer clinically determined to be emergent in nature and the patient is stable for transfer to VA or discharge.

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Medical Necessity	Any medical condition of recent onset manifesting itself by acute severity of symptoms, including severe pain. **A determination of a medical emergency focuses on the patient's presenting symptoms rather than the final diagnosis.** Adjudicative decisions are made on a case-by-case basis. However, certain conditions are the leading cause to seek emergency treatment. These conditions include, but are not limited to: loss of consciousness, seizure, no recognition of one side of the body, paralysis, chest pain, shock, gangrene, coughing blood, trouble breathing, and choking. Cases that fall into categories that may be chronic or blatantly non-emergent generally do not fall into qualifying for immediate treatment under the prudent layperson standard. Normal follow-up of a medical condition, removal of stitches, or medication refills would generally be considered as non-emergent conditions under the prudent layperson standard.

Qualifying Conditions for Payment	(1) Veterans determined eligible for unauthorized non-VA care pursuant to Title 38 United States Code (U.S.C.) §§1728 and 1725. (2) Medical emergency by prudent layperson standards. (3) An attempt to use a Department or other Federal facility/provider beforehand would not have been considered reasonable under the prudent layperson standard. [Note: For example, the VA facility is not considered reasonably available when evidence establishes that a veteran was taken to a non-VA hospital in an ambulance and the VA facility was on divert status or the ambulance personnel determined the nearest available appropriate level of care was at a non-VA medical center. Conversely, a VA facility is considered reasonably available when a veteran bypasses a VA facility capable of providing the emergency care for a non-VA emergency department.]

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Case Example A	A patient presents to the emergency department with a complaint of chest pain. The patient is examined and evaluated and discharged with a diagnosis of mild gastric irritation. Retrospective analysis by a Fee Basis Unit may determine that gastro-intestinal upset is not an appropriate use of an emergency department and deny the claim as non-emergent. However, the patient's initial judgment seeking emergency treatment regarding his/her chest pain, a potentially serious problem, is appropriate. This type of visit clearly falls into the category of what any prudent lay person would consider an appropriate use of an emergency department.

Case Example B	A patient presents to the local emergency department with a complaint of intractable pain with history of metastatic cancer. Following initial examination and evaluation in the emergency department the patient is admitted to the hospital for pain management. As the patient is in severe pain this meets the prudent layperson emergent definition. A case review of the inpatient stay should be conducted to determine the point of stability when patient discharge or transfer to VA would be appropriate. [Note: If a person is admitted to a hospital through the emergency room and remains in the hospital for a period of days, there would need to be a case-by-case determination whether to apply the medically necessary standard for utilization review rather than the prudent lay person standard for care provided following the initial evaluation and examination]

Case Example C	A patient is taken to the emergency department with homicidal/suicidal ideation/plan. This care meets the prudent layperson definition for emergency care and it may require admission. If possible (based on patient's stability), it may be optimal to transfer the patient to VA where specialized mental health acute treatment and follow-up is available. [Note: Hospital and outpatient care for a veteran who is either an involuntary patient or inmate in an institution of another government agency if that agency has a duty to give the care or service is excluded from the medical benefits package. See 38 CFR §17.38(c) (5)]

Case Example D	A patient who is acutely intoxicated reports to the emergency department with a complaint of falling with possible injuries. This situation meets the prudent layperson emergent definition and it may require admission. It is optimal to transfer the veteran to VA upon stabilization for transfer and continued care is needed.

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Case Example E	Patient presents to emergency department with complaints of acute abdominal and flank pain with diagnosis of kidney stones. While renal calculi are not normally emergent, the patient's pain and perception of emergency could meet the prudent layperson definition. A scheduled procedure after the initial emergency department examination and evaluation would not necessarily meet the prudent layperson standard for emergency care, as care could be coordinated through the VA.

Case Example F	A patient with new onset of acute confusion and/or psychosis meets the prudent layperson emergency care definition. As stated above, transfer to VA when the patient is stable may be optimal for continuity of care.

Cases Generally Not Meeting Prudent Layperson Standard	Cases generally not meeting prudent layperson could include: • patient currently under physician care for specific condition and presents to emergency department for follow up of non-acute symptoms such as a medication refill, foley catheter change, work excuse, etc; • veteran is transferred from one community facility to another—the initial community emergency department encounter may meet prudent layperson definition but subsequent transfer based on clinical assessment generally no longer falls within layperson category. This situation requires case review as there may be exceptions, such as the first emergency department/facility is unable to furnish the needed care and transfers an unstable patient to the second facility for continued emergency care; • multiple emergency department visits on same day for same complaint requires case review to determine need for emergency care.

References	• Title 38 U.S.C. § 1728. • Title 38 CFR § 17.120. • Title 38 U.S.C. § 1725. • Title 38 CFR §§ 17.1002 (b) and (c), and 17.1006 • Medicare Claims Processing Manual

Questions	Please submit questions regarding prudent layperson utilization of emergency services to VHA CBO Fee Program Office at HACFeeInquires@va.gov