American Academy of Emergency Medicine Position Statement
Emergency Services Reimbursement Provisions in the Patient Protections and Affordable Care Act (PPACA)

The American Academy of Emergency Medicine opposes the emergency services reimbursement provisions outlined in the interim final rule of the Patient Protections and Affordable Care Act (PPACA) that sets insurer compensation rates for out-of-network providers of emergency services. Emergency departments play an integral role in our healthcare system. In addition to treating urgent and emergency conditions, our emergency services providers act as a safety net for the significant portion of the population who are uninsured or who are unable to see a primary care physician. Between 1996 and 2006, ED visits rose by 25%, while the number of EDs fell by 10%, as many EDs could no longer afford to remain operational. All the while, Emergency departments are required by an unfunded federal mandate (EMTALA) to treat anyone who arrives at their door, regardless of their ability to pay. Payments from government sources are already insufficient to cover costs or expenses and continue to be threatened by measures such as the Sustained Growth Rate (SGR). Ensuring appropriate reimbursement from private insurers is crucial in maintaining many physician groups viability.

The Patient Protection and Affordable Care Act attempted to prevent insurers from treating their customers differently depending on their use of a contracted versus non-contracted emergency departments. What it has done, in effect, is set an arbitrary if not artificially low rate of payment using flawed methodologies. PPACA 45 CFR 147.138(b)(3)(i) sets out-of-network emergency service reimbursement rates at the greatest of: (1) the median amount negotiated with in-network providers for the same services, (2) the Medicare rate, (3) the amount calculated by the same method the plan generally uses to determine payment to out of network providers. (1) and (2) describe significantly discounted rates that will not allow for emergency departments to afford to provide quality care to the tens of millions of patients who pay little or nothing for emergency care services. (3) Allows an insurer to manipulate their out of network rates using flawed databases such as Ingenix. 45 CFR 147.138(b)(3)(i) essentially gives insurers every incentive to not form adequate networks that include emergency care services and to not negotiate in good faith for emergency services reimbursement, since they can pay significantly discounted rates if emergency care services are out-of-network. In effort to remain financially viable, this could shift more of the cost to the patient and allow the insurers to increase their profitability.

Emergency physicians will continue to treat everyone who comes through the doors, but emergency departments cannot survive giving free care to millions while being forced to offer deeply discounted care to everyone else. 45 CFR 147.138(b)(3)(i) is a boon to insurers, who will become more profitable by no longer contracting with emergency departments and instead paying lower rates. Emergency care will suffer, as emergency departments are forced to make significant cuts, and many emergency departments will close. AAEM recommends that the provisions within 45 CFR 147.138(b)(3)(i) be withdrawn.

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