

August 15, 2002

Memorandum 2002-7A

TO: All Licensed Motor Vehicle Insurers in the State of Hawaii

FR: Wayne Metcalf  
Insurance Commissioner

RE: Coverage of Emergency Services

Questions have recently arisen concerning the definition of "emergency services" and what constitutes an "emergency medical condition" in the adjustment of personal injury protection ("PIP") claims. Please note that §431:10C-103, Hawaii Revised Statutes ("HRS"), provides guidance on this matter:

""Emergency medical condition" means a medical condition that manifests itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

- (1) Placing the health of the individual, including the health of a pregnant woman or her unborn child, in serious jeopardy;
- (2) Serious impairment to bodily functions; or
- (3) Serious dysfunction of any bodily organ or part.

"Emergency services" means:

- (1) A medical screening examination, if required by federal law, that is within the capability of the emergency department of a hospital, **including ancillary services routinely available to the emergency department, to evaluate an emergency medical condition;** or
- (2) Further medical examination and treatment, if required by federal law, that is within the capabilities of the staff and facilities available at the hospital, including

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any trauma and burn center of the hospital to stabilize an emergency medical condition. (Emphasis added)

“Stabilize” means the provision of medical treatment as may be necessary to assure, within reasonable medical probability, that no material deterioration of an individual’s medical condition is likely to result from or occur during a transfer to another facility, if the medical condition could result in placing the health of the individual or the health of a pregnant woman or her unborn child in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.”

PIP claims, therefore, shall be adjusted in accordance with the above definitions and in accordance with applicable provisions of the Title 16, Chapter 23, Hawaii Administrative Rules (“HAR”). Charges and treatment rendered for emergency services during the initial seventy-two hours following the motor vehicle accident resulting in injury shall not be subject to HAR Subchapter 17, Chapter 23, Title 16.

However, the charges for emergency treatment shall not exceed the health care or alternative care provider’s usual and customary fee and shall be appropriate, reasonable, and necessarily incurred. Charges for treatment of a primarily palliative nature shall be subject to the requirements of HAR Subchapter 17, Chapter 23, Title 16, in the same manner as any other treatment.

Should further clarification be needed, please contact the Insurance Division at the above address or at (808) 586-2790.