



April 3, 2018

Secretary Alex Azar
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Secretary Alexander Acosta
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, DC 20210

Dear Secretary Azar and Secretary Acosta:

You recently received a letter from Senators Claire McCaskill and Ben Cardin, posing a series of questions regarding health insurer Anthem and their recently enacted policies to limit patient access to hospital emergency departments. In the letter, the two senators focus on whether this new policy violates the federal prudent layperson standard.

As one of the first states where this policy has been implemented, physicians, hospitals, and most importantly, patients have felt the full brunt of this action. Collectively, we have many individual stories that demonstrate that Anthem is not viewing the symptoms that patients were experiencing when they present themselves to an emergency department. Rather, we believe they only are looking at the final diagnosis codes determined upon the discharge of the patient. Anthem uses nearly 2,000 of these diagnosis codes in its review and denial process.

Anthem argues that it applies the prudent layperson standard when it retrospectively adjudicates claims. However, Anthem's employees are not laypersons, and they cannot begin to assimilate a prudent patient's thought process when acute symptoms emerge and he or she legitimately believes life might hang in the balance. The fact that Anthem had denied the emergency department claim for an individual who was in a motor vehicle accident or for an individual who consulted with the insurer's own hotline and was told by the Anthem clinician to seek care immediately in an emergency department, raises serious questions about their application of the prudent layperson standard.

Notwithstanding individual patient experience, an external review of this policy raises serious concerns about its application to important community-wide health equity issues, particularly around gender and racial disparities.

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Had this policy been in place in 2016, female patients would have accounted for 61 percent of denied claims in our state. Additionally, codes that are specific to or most prevalent among females accounted for 10.5 percent of all deniable Anthem emergency department claims during 2016. During the same period, researchers found that codes that are male-specific, or more prevalent among males, accounted for less than 1 percent of all claims that would have been denied.

For racial disparities, researchers found that during the year 2016, Anthem potentially could deny one out of five emergency visits where a nonwhite patient is seeking treatment for one or more of the nearly 2,000 diagnosis codes. According to the Census, this demographic group accounts for only 16 percent of the nonelderly population with health insurance coverage in Missouri. This is a statistically significant difference. Further, many of these patients live in communities with inadequate access to care, and they visited the emergency department when alternate options were not available. For example, 52 percent of these visits were by patients who live in a community that is classified by the federal government as a Health Professional Shortage Area.

Further evidence of Anthem's policy affecting the prudent layperson standard stems from a comparison of the Anthem nonemergent code list against the New York University ED Classification Algorithm. A comparison reveals that only 15.2 percent of the included diagnosis codes are classified as nonemergent. Of those, fewer than 100 are considered nonemergent with absolute certainty, meaning that 95 percent of the Anthem codes have some probability of being emergent.

Missouri's physicians and hospitals have extensive "boots on the ground" experience with this policy. As you continue your research into the questions posed by Senators McCaskill and Cardin, we wanted to offer our first-hand experience and share that we stand ready to assist you with any information you think would be helpful for your evaluation of this policy.

Sincerely,



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Missouri State Medical Association



Jonathan Heidt, M.D.
President
Missouri College of Emergency Physicians



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Executive Director
Missouri Association of Osteopathic
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