

# United States Senate

WASHINGTON, DC 20510

December 20, 2017

Joseph R. Swedish  
Chairman, President, and Chief Executive Officer  
Anthem, Inc.  
120 Monument Circle  
Indianapolis, IN 46204-4903

Mr. Swedish:

I write to request information from Anthem regarding the decision to no longer cover emergency room services in Missouri for care that is deemed non-emergent. Anthem has a strong presence in Missouri, and this decision significantly impacts health care costs for thousands of Missourians.

In May, Anthem BlueCross Blue Shield sent out notices to its customers in Missouri informing its patients that “you’ll be responsible for ER costs when it’s NOT an emergency.”<sup>1</sup> Anthem told its customers that if they “need care now, but it’s not an emergency” they should try other options like urgent care and retail health clinics, online consultations, or a nurse line.<sup>2</sup>

Patients are not physicians. I am concerned that Anthem is requiring its patients to act as medical professionals when they are experiencing urgent medical events. Missouri state law and federal law protect patients from having to make these types of medical decisions. Lawmakers have recognized it is unreasonable and unfair to expect patients to have the same knowledge as doctors and be able to distinguish between the chest pain caused by indigestion and chest pain caused by a heart attack. State and federal law has codified a “prudent layperson” standard for insurers to use when determining coverage of emergency medical treatment. These laws protect patients by ensuring that their emergency care is covered by their insurer as long as this standard is met.<sup>3</sup>

Recent reports raise serious concerns with Anthem’s approach to complying with these federal and state laws. For example, according to a recent article in *Modern Healthcare*, there are reports that under this policy Anthem denied emergency room care for a pedestrian who was struck by a

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<sup>1</sup> See Sample Anthem BlueCross BlueShield Missouri Notice, ([http://mediad.publicbroadcasting.net/p/kwmu/files/mo\\_er\\_member\\_letter\\_2017.pdf](http://mediad.publicbroadcasting.net/p/kwmu/files/mo_er_member_letter_2017.pdf)).

<sup>2</sup> *Id.*

<sup>3</sup> See Mo. Rev. Stat 376.1350, Mo. Rev. Stat 376.1367, and Sec. 1001 of the Patient Protection and Affordable Care Act.

car and for a patient who was “potentially experiencing a stroke.”<sup>4</sup> These denials jeopardize the health and safety of Missourians. Anthem’s policies are discouraging individuals from receiving needed care and treatment out of fear they may personally be fully financially responsible for the cost of treatment, even though they have insurance.

Moreover, Anthem’s policies are jeopardizing the financial viability of hospitals across the state. *Modern Healthcare* reports that nationwide “41% of rural hospitals are operating at a loss.”<sup>5</sup> In Missouri, roughly 48 percent of rural hospitals are at risk of closure.<sup>6</sup> A direct result of this policy is a shifting of costs from the insurer to hospitals and patients. If patients are unable to pay the costs, hospitals will bear the full brunt of those costs. For hospitals currently operating at a loss, the potential increase in uncompensated care resulting from Anthem’s policy may be devastating.

In order to better understand Anthem’s policy to deny emergency room care for “non-emergent” conditions effective June 1, 2017, and how it complies with the prudent layperson standard under both Missouri and federal law, please provide the following documents and information no later than January 19, 2018:

1. All internal communications, including e-mail, to or from senior corporate management relating to the company’s decision to clarify its policies regarding emergency room care utilization.
2. All presentations to senior corporate management, or government agencies, relating to emergency room care utilization.
3. All complaints received by Anthem from any entity relating to coverage of emergency room care in Missouri, Kentucky, or Georgia.
4. All communications, including e-mail, from hospitals related to this policy.
5. All documents referring or relating to the creation of exceptions to this policy.
6. All documents, including communications, related to potential cost savings expected as a result of this policy.
7. A narrative description of the process by which reimbursement is denied, including identification of questionable costs and dispute resolution.

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<sup>4</sup> *Hospitals and patients feel the pain from Anthem’s ED policy*, Modern Healthcare (Dec. 2, 2017) (<http://www.modernhealthcare.com/article/20171202/NEWS/171209981>).

<sup>5</sup> *No signs of relief: Rural providers remain on edge over ACA’S uncertain future*, Modern Healthcare (July 22, 2017) (<http://www.modernhealthcare.com/article/20170722/NEWS/170729976>).

<sup>6</sup> *See Cuts threaten rural hospitals ‘hanging on by their fingernails,’* CNN (July 1, 2017) (<http://www.cnn.com/2017/06/30/health/rural-hospitals-medicare-cuts-health-care/index.html>).

8. All legal analyses relating to the “prudent layperson” standard as defined under Mo. Rev. Stat 376.1350, Mo. Rev. Stat 376.1367, and Sec. 1001 of the Patient Protection and Affordable Care Act.

For purposes of this request, “senior corporate management” includes all company officials at the level of Vice President and above for Anthem.

Please direct any questions and any official correspondence related to this request to Janelle McClure with my staff at (202) 224-6154 or [Janelle\\_McClure@mccaskill.senate.gov](mailto:Janelle_McClure@mccaskill.senate.gov). Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" being the most prominent part.

Claire McCaskill  
United States Senator