AMERICA'S HOSPITALS AND HEALTH SYSTEMS

March 5, 2018

Craig Samitt, M.D.
Executive Vice President and Chief Clinical Officer
Anthem, Inc.
120 Monument Circle
Indianapolis, IN 46204

Dear Dr. Samitt:

Our organizations represent hospitals and health systems across the country and are actively engaged in the treatment and well-being of Anthem's more than 40 million members. As we have expressed through meetings and phone calls, we continue to have serious concerns that Anthem's coverage policies for outpatient imaging and emergency care services are detrimental to patients, diminishing access to care and driving care location based on the lowest cost provider. We urge you to abandon these policies immediately in order to ensure that patients receive high-quality, appropriate, timely care.

Anthem's retroactive determination of coverage for emergency services is both dangerous and out of compliance with the "prudent layperson" standard. In a recent article, a young woman detailed her experience of a coverage denial under Anthem's new policy after going to the emergency room for treatment of severe abdominal pain.[1] Any reasonable individual with such severe, sudden, and unusual pain would assume that they were experiencing an emergency medical event and seek immediate treatment. From the clinician's perspective, a patient presenting with such symptoms could have any number of life-threatening conditions (*e.g.*, a ruptured appendix). As most individuals are not medical professionals, they rely on physicians and other clinicians for diagnosis and treatment and those clinicians in turn rely on their training and diagnostic tools to aide them in making their determinations (*e.g.*, a CT scan). Thus, when a patient enters the emergency department, neither the patient nor the physician knows the diagnosis, yet the clinician is obligated to act. Under federal EMTALA law, providers are required to screen and stabilize patients with emergency medical conditions based on the "prudent layperson observer" standard.[2] Contrary to EMTALA and the "prudent layperson"

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[1] Vox, *An ER visit, a $12,000 bill – and a health insurer that wouldn't pay* (January 29, 2018), https://www.vox.com/policy-and-politics/2018/1/29/16906558/anthem-emergency-room-coverage-denials-inappropriate.

[2] Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening examination (MSE) when a request is made for examination or treatment for an emergency medical condition (EMC), including active labor, regardless of an individual's ability to pay. *See* CMS, *Emergency Medical Treatment & Labor Act (EMTALA)*, *https://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/*.
See also "…we believe that a hospital must be seen as having an EMTALA obligation with respect to any individual who comes to the dedicated emergency department, if a request is made on the individual's

standard, Anthem's policy puts the patient in the position of knowing their diagnosis before seeking care and the clinician in the position of both knowing that diagnosis and turning the patient away from the emergency room.

Anthem has represented to our organizations that retroactive determinations of coverage are based on a review of both the presenting symptoms and the ultimate diagnosis codes. It does not appear, however, that determinations are following this protocol.[3] This was highlighted in the story referenced above when the young woman's claim was denied at multiple levels of internal Anthem appeals despite her serious and potentially life-threatening presenting symptoms.[4]

Perhaps the most disturbing outcome of Anthem's policy is that the young woman in the recent article stated that she would not go to the emergency room for any sort of care in the future due the fear of her claim being denied.[5] We understand Anthem's desire to ensure patients do not seek unnecessary care. But the greatest fear for our organizations – and one that we believe is shared by Anthem – is that patients who need our assistance delay medical treatment. In emergency situations, even small delays in seeking care can mean permanent disability or even death.

Regarding the recently change in coverage rules for outpatient imaging, it is unfortunate that Anthem has decided to drive where your members receive care not because of quality, but because of price. As with the emergency services policy, this policy also lacks transparency. Anthem uses a proprietary system and algorithm to determine where the patient should receive a service, but neither the patient nor his clinician have any insight into how that determination is made. This third-party system has incentives to deny requests for imaging in a hospital outpatient department, even if it is better for the patient in terms of timeliness, transportation, care coordination, or seamless patient medical record exchange. This additional roadblock to receiving care is confusing to patients and will lead to some patients failing to receive needed diagnostic testing.

These changes in coverage rules lack transparency for patients and providers, discourage patients from seeking appropriate and timely treatment, inappropriately place Anthem

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behalf for examination or treatment for a medical condition, whether or not the treatment requested is explicitly for an emergency condition. **A request on behalf of the individual would be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition"** [Emphasis added]. 62 F.R. 53234 (September 9, 2003), https://www.cms.gov/Regulations-and Guidance/Legislation/EMTALA/Downloads/CMS-1063-F.pdf.

[3] "Heidt, who attended the summer meeting, says that his hospital "was receiving denials within days. We discussed that with [Anthem]. They said they were thinking of looking at medical records, but all of the denials at that point were coming off the claims." Vox, *An ER visit, a $12,000 bill – and a health insurer that wouldn't pay* (January 29, 2018), https://www.vox.com/policy-and-politics/2018/1/29/16906558/anthem-emergency-room-coverage-denials-inappropriate.

[4] "Anthem wrote that it did not have sufficient medical records from her hospital. The hospital told Cloyd they had sent the health plan all the necessary documents. Cloyd made a second appeal." *Id.*

[5] "The experience completely changed how Cloyd thinks about the emergency room. She would still take her 7-year-old daughter in case of emergency, but she says she no longer thinks she'd ever seek emergency care unless forced by a medical provider." *Id.*

between patients and their clinicians, and make material – out of cycle – changes to existing contracts between insurers and hospitals. We urge Anthem to retract these policies and work with our organizations to ensure your members receive the high-quality care they deserve.

Sincerely,

America's Essential Hospitals
American Hospital Association
Association of American Medical Colleges
Catholic Health Association of the United States
Federation of American Hospitals
Premier healthcare alliance
Vizient, Inc.