

Anthem Adds Exceptions to Its Avoidable ER Program, But Are They Enough?

“Patients are not physicians,” wrote Senator Claire McCaskill (D-Mo.) in December. “I am concerned that Anthem is requiring its patients to act as medical professionals when they are experiencing urgent medical events.” The issue at heart: whether an insurer can decide emergency coverage wasn’t warranted when, *after* the crisis passes, it appears that the issue would have resolved without emergency intervention.

The letter was addressed to Joseph R. Swedish, the CEO at the time of mega health system Anthem, Inc., and includes McCaskill’s “serious concerns” about the possibility that Anthem’s avoidable ER program had violated both state and federal laws that prevent insurance companies from making coverage decisions based on a patient’s ultimate diagnosis, rather than his/her presenting symptoms.

Senator says program is “discouraging individuals from receiving needed care”

The Senator’s letter references an article by *Modern Healthcare* which exposed a decision by the Indianapolis-based insurer to deny coverage to an individual who had been taken to the emergency department after experiencing the symptoms of a stroke (it was later determined that the patient had not had a stroke), as well as the case of a member transported to the ER after being hit by a motor vehicle but who emerged from the event with relatively minor injuries.

“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,” wrote McCaskill.

Anthem implemented its avoidable ER program in Kentucky in 2015 and in Georgia, Indiana, Missouri, New Hampshire and Ohio in 2017. The program affects Anthem’s commercial healthcare plans, not its Medicare plans.

Healthcare providers are concerned about the program in part because it gives Anthem the means to make coverage decisions (in review) based on diagnostic codes rather than medical records. Practitioners criticize the program’s code-focus as overlooking the big picture that led a patient to the emergency department in the first place, and they further see the program as deterring individuals from seeking emergency care when they may need it most.

New exceptions include: children, doctor-instructed visits, certain tests

No doubt as a result of these challenges from McCaskill and others, last month Anthem announced revisions to its emergency coverage rules. Whereas prior to these recent changes the insurer would deny emergency coverage in light of an after-the-fact determination that the health crisis could have been treated without emergency intervention, now Anthem will always allow ER visits in certain cases, regardless of what is determined down the road.

Specifically, the exceptions to exclusion of ER coverage are:

— in cases of members younger than 15;

— members traveling out of state;

— when the patient has been instructed by a healthcare provider to visit an emergency room;

— in cases of patients undergoing surgery, having a CT scan or MRI, or being administered IV medications or fluids while at the ER.

Anthem is making these revisions to the ER coverage guidelines effective January 1st and will retroactively apply them to claims that had been denied. The health system also said it will procure hospital medical records for use in reviewing a claim.

President of ACEP sees the program as “putting patients in a potentially dangerous position”

Dr. Paul Kivela is the president of the American College of Emergency Physicians. He's not alone in arguing that these revisions do not go far enough to protect patients in crisis. In a statement, Kivela said that the changes “do not address the underlying problem of putting patients in a potentially dangerous position of having to decide whether their symptoms are medical emergencies or not before they seek emergency care, or pay the entire bill if it's not an emergency.”

Anthem has described its avoidable ER program as a set of guidelines that are intended to help patients decide which facility is the most appropriate for medical treatment. Senator McCaskill remains concerned that the policy violates healthcare laws, even in light of the new exceptions added by the insurer.

Shortly after Anthem's changes to the controversial program were announced, McCaskill told *Modern Healthcare* that the insurer is still “putting the onus on someone who has no medical training to determine whether or not they should go to the ER.” She said the added exceptions have not shut down her investigation of the program. After mentioning that UnitedHealthcare is reportedly floating the idea of a similar ER policy for itself, she added, “We've got to stop this in its tracks.”

This article is provided for educational purposes only and is not offered as, and should not be relied on as, legal advice. Any individual or entity reading this information should consult an attorney for their particular situation. For more information/questions regarding any legal matters, please email info@nelsonhardiman.com or call 310.203.2800.