American College of Emergency Physicians®

ADVANCING EMERGENCY CARE

May 14, 2018

Mr. Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe St.
Austin, Texas 78701

Dear Commissioner Sullivan-

I am writing regarding your May 11, 2018 letter (attached) to Dr. Dan McCoy, President of Blue Cross and Blue Shield of Texas (BCBS TX), in which you stated your concerns with the insurer's proposed policy to potentially deny any coverage of an out-of-network emergency department visit by their group or retail HMO policyholders, should they retroactively determine the policyholder should not have thought the condition serious or life-threatening.

We are pleased that you and the Texas Department of Insurance are taking such immediate and proactive action on this proposal, and are seeking additional information from BCBS TX. We especially appreciate the remarks in your letter that point out how problematic ambiguous standards can be in guiding patients to appropriate sites of care, and their impact when enforced retroactively and aggressively. As you note, none of us want patients to avoid seeking necessary medical care simply because they are uncertain of their insurance coverage. As emergency physicians, we see patients every day who delayed coming to our emergency department, only to end up there with significantly exacerbated symptoms or conditions—they consistently tell us they did so because they feared a high bill.

We are concerned, though, that you reference some of the "safeguards" that Anthem Blue Cross Blue Shield recently added to their own retroactive emergency coverage denials program as something BCBS TX might want to consider adding to their policy in order to "add some much-needed certainty to the coverage review process."

The American College of Emergency Physicians (ACEP) has over the past year strongly advocated for Anthem to rescind this dangerous policy altogether which it currently has active in six of states (GA, IN, KY, MO, NH, and OH). When Anthem announced on February 14 that it was "enhancing" the policy to add four (the last four of those listed in your letter), ACEP was clear that this was not enough.

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We noted in a media statement at that time,

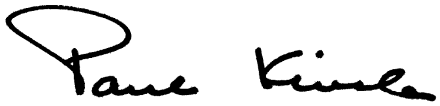
> "The changes...do not address the underlying problem of putting patients in a potentially dangerous position of having to decide whether their symptoms are medical emergencies or not before they seek emergency care, or pay the entire bill if it's not an emergency. The additional always-pay exceptions, such as patients who receive surgery, IV fluids or IV medications, MRI or CT scans, or hospital admission, should have always been exceptions.
>
> Patients should not be forced to diagnose themselves out of fear their insurer won't pay. Most patients can't be expected to determine, for example, the difference between abdominal pain that is life-threatening and abdominal pain that isn't. It's impossible for a patient to know before going to the emergency room whether they'll receive there the IV fluids, MRI, or surgery needed to ensure their visit will be covered. The decision to 'ride it out' instead of seeking emergency care could lead to life-long disability or even death."

As you work with BCBS TX in the coming days to facilitate an appropriate regulatory result that ensures Texans with HMO coverage under the insurer are adequately protected, we urge you to look far beyond the so-called enhancements that Anthem has added to their program, and in fact would caution against using any of what you term "objective and bright line safeguards".

As emergency physicians, we often ourselves cannot differentiate just based on presenting symptoms when a patient first comes to our emergency department whether they are experiencing an emergent or nonurgent condition – many of these share very similar symptoms, and we frequently must do a full work-up and exam, sometimes with additional diagnostic tools, before it becomes clear which it is. Therefore, any insurance policy places this burden on the patient to make such a determination even before they've left the house to seek medical care, and tying to it the threat of a large, unpaid bill, is unreasonable and dangerous.

Your letter notes, "patients cannot be asked to determine on their own whether ambiguous symptoms warrant an emergency room visit." We therefore hope that you will instead in the coming days consider calling on BCBS TX to rescind this policy altogether. If we can provide additional information on our concerns or offer our experiences with other such policies, please feel free to contact Laura Wooster, ACEP's Associate Executive Director of Public Affairs at lwooster@acep.org or (202) 370-9298.

Sincerely,



Paul D. Kivela, MD, MBA, FACEP
ACEP President

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May 11, 2018

Dr. Dan McCoy, President
Health Care Service Corporation
Blue Cross Blue Shield of Texas
1001 East Lookout Drive
Richardson, Texas 75082

Dear Dr. McCoy:

I read with great interest that Blue Cross and Blue Shield of Texas ("BCBS") intends to implement a policy limiting health insurance coverage for emergency room visits in certain situations. In particular, as I understand it, the BCBS proposal would be that its retail HMO members could be responsible for their entire bill if they go to an out-of-network ER for a condition that is not genuinely serious or life-threatening.

The implicit goal – reducing unnecessary health care costs – is, of course, a desirable one. The BCBS proposal, however, raises a number of questions that need to be answered.

I am concerned that ambiguous standards can potentially produce undesirable results in the best of circumstances, but they can be particularly problematic when applied retroactively and aggressively. I am sure that none of us want patients to avoid seeking necessary medical care simply because they are uncertain of their insurance coverage.

At my direction, TDI staff have separately reached out to BCBS with a set of detailed questions about how the new policy will work, and I have enclosed a copy for your convenience. We have also researched similar policies from other states, and have become aware of some Anthem Blue Cross and Blue Shield provisions that were included as safeguards to facilitate patient protection. Those Anthem Blue Cross and Blue Shield provisions apparently exclude from retroactive insurance review situations such as the following:

- The patient is directed to the emergency room by a health care provider, including an ambulance service.
- The patient is under age 15.
- The patient lives more than 15 miles from an urgent care center.
- The emergency visit is on a weekend or major holiday.
- The patient is traveling out of state.

- The emergency visit results in any kind of surgery.
- The patient receives IV fluids, IV medications, an MRI, or CT scan during the emergency room visit.
- The visit was billed as urgent care.
- The ER visit is associated with an outpatient or inpatient admission.

Provisions like these would appear to add some much-needed certainty to the coverage review process. And there may well be other and better methods to add much-needed prospective reliability, and comfort for consumers. At a minimum, the development of objective and "bright-line" safeguards might go a long way toward providing important and practical certainty to consumers in advance of critical health care decisions. Are any such safeguards under consideration for your particular policy?

We understand the need to control costs and help people seek appropriate care, but I am sure you agree that patients cannot be asked to determine on their own whether ambiguous symptoms warrant an emergency room visit. We hope to work with you to facilitate an appropriate regulatory result – one that is right for consumers and consistent with Texas law.

I look forward to hearing from you.

Very truly yours,

Kent C. Sullivan
Commissioner of Insurance

Enclosure