

July 18, 2022

Members of the Delegation,

On behalf of the American College of Emergency Physicians (ACEP) and the 40,000 members we represent, we write to express our deep concern with Anthem Blue Cross California's decision to deny payment for the highest level of emergency department (ED) care in California.

Beginning in the second half of 2020 as hospitals and EDs in California and across the country were still grappling with uncertainty, fear, and overburdened staff during the pre-vaccine days of the COVID pandemic, Anthem began to deny payment to many small emergency physician groups in the state for care they provided to patients with some of the highest acuity conditions, such as heart problems, severe kidney infection with sepsis, and seizures, among others. These denials occurred throughout the state at different hospitals staffed by different emergency physician groups, regardless of whether they were in- or out-of-network with the health insurer.

As background, there are five levels of ED care, which are documented and billed for using CPT codes 99281 - 99285. These ED codes require all three key components (patient and family history, a physical examination, and the physician's medical decision-making) to be met and documented for the level of service billed in the emergency physician's claim. Patients are required to be categorized based on the severity of their presenting problem(s): for example, a Level 4 (99284) visit is a severe problem that requires urgent evaluation that will, without treatment, have a high chance of extreme impairment (however, does not pose an immediate threat to life or to physical function). A Level 5 (99285), on the other hand, is an immediate, significant threat to life or physiologic functioning. An additional point to be aware of is that emergency physician services are billed separately by the physician group from the facility fee, which is billed by the hospital.

It is care provided in these most severe cases that Anthem has refused to pay at all. Anthem has stated without sufficient evidence that the level of care billed is higher than the actual level of care provided. While it is not uncommon for health plans to review provider claims and determine whether they believe the claim should be adjusted based on bundling, downcoding, benefit limitations, and the like, it is unprecedented for a payer to stop payment to a physician group entirely because of a purported disagreement by the insurer over the code billed. Instead, insurers usually will pay emergency physicians what they unilaterally believe is appropriate, and our members can then decide whether to challenge that reimbursement through state law mechanisms or, if the insurance product in question is federally regulated, through the new independent dispute resolution process implemented under the *No Surprises Act*.

This is well-established practice because the law requires insurers to make a good faith effort for payment of a complete claim. To date, Anthem has refused to pay millions of dollars in claims that were correctly coded and billed. In fact, one of the emergency physician groups involved was able to compare their own records for such denied cases with those of the hospital's, and found that the hospital was paid at a Level 5—casting significant doubt on Anthem's assertion that the physician claims were fraudulently coded too high. The emergency care safety net will fail in the short term if insurers refuse to make payments as required by law. Physician groups have already indicated that lack of sufficient revenue makes it difficult to provide adequate staffing. Attracting and retaining the best emergency physicians to treat Californians is our top priority. The Anthem actions are particularly egregious as they appear to be targeted just at small emergency physician groups that staff only a single hospital—as small businesses, these groups are least able to absorb delays or denials of payment, nor do they have the staffing resources to continue to appeal this through the insurer's labyrinthine appeals processes.

ACEP urges the California Congressional Delegation to request Anthem bring to an end to the policy of rejecting Level 5 claims that have been correctly coded and billed by emergency physicians. Without immediate action, the continued non-payment of claims could result in ED physician groups going out of business, destabilizing the health care safety net, and severely limiting access to the lifesaving emergency care that Californians need and deserve.

We can follow up with you individually with redacted examples and documentation of these payment refusals to support our concerns. As well, should you have any questions, please do not hesitate to contact Laura Wooster, MPH, ACEP's SVP of Advocacy & Practice Affairs at lwooster@acep.org or Elena Lopez-Gusman, California ACEP's Executive Director at ELopez-Gusman@californiaacep.org.

Sincerely,



Gillian R. Schmitz, MD, FACEP
President
American College of Emergency Physicians



Lori Winston, MD
President
California ACEP