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November 9, 2018

Mr. Michael Carson
President and CEO
Harvard Pilgrim Health Care
93 Worcester Street
Wellesley, MA 02481

Dear Mr. Carson,

On behalf of the more than 39,000 members of the American College of Emergency Physicians (ACEP), I write to express our members' deep concern with the recent announcement by your plan in New Hampshire that effective January 1, 2019, it will apply a new 50 percent coinsurance for policyholders who seek care in an emergency department, if their final diagnosis is deemed (after-the-fact) to be "nonemergent" based solely on a list of over 5,900 diagnosis codes issued by your plan. Such diagnoses include potentially life-threatening conditions such as candidal sepsis, candidal meningitis, emphysema, and hepatomegaly. We are asking you to halt implementation of this dangerous and onerous policy and request a meeting of our respective organizations to discuss more constructive alternatives.

Patients Are Not Physicians

NH Harvard Pilgrim states that members "treated at an ER for non-emergent conditions are responsible for the deductible and 50% coinsurance after the deductible is met. The new ER cost sharing structure applies when one of the non-emergent diagnoses listed here is billed in the primary position."

The new Harvard Pilgrim policy requires members to act as medical professionals when they are experiencing an urgent medical event. Patients are not physicians—they cannot be expected to self-diagnose their medical conditions in order to make the decision of whether or not to seek care in an emergency department (ED). In fact, most clinicians cannot make a diagnosis with confidence without the support of a wide range of tools and tests. Therefore, determinations impacting a policyholder's level of coverage or cost-sharing should only be made based on *symptoms* they experienced that led to their decision to seek emergency care, rather than final diagnosis.

Federal law has codified the "prudent layperson" standard for determining coverage of emergency medical treatment by insurers.[1] In doing so, it recognizes that it is unreasonable to expect patients to have the same knowledge as physicians and, for example, be able to determine if a blow to the head was severe enough to cause a dangerous head injury, or in the end be found to result only in a scalp contusion (one of the diagnoses included in the aforementioned list of codes).

[1] 10 26 CFR 54.9815-2719A(b)(3); 29 CFR 2590.715-2719A(b)(3); 45 CFR 147.138(b)(3)

WASHINGTON, DC OFFICE
2121 K Street NW, Suite 325
Washington, DC 20037-1886

202-728-0610
800-320-0610
www.acep.org

Final Diagnoses Do Not Accurately Identify "Nonemergent" ED Visits

A 2013 research study published in JAMA[2] found that patients who receive a diagnosis of a low-acuity condition often present with initial complaints similar to patients with more serious conditions. Examining a dataset of over 34,900 unique ED visits found that 6.3% of visits were determined to have primary care–treatable diagnoses based on discharge diagnosis, yet the chief complaints reported for these ED visits were the same chief complaints reported for 88.7% of all ED visits. Of these visits, 11.1% were serious enough to be identified at ED triage as needing immediate emergency care, and 12.5% required hospital admission (with 3.4% of these going directly from the ED to the operating room). As the study authors noted, these results "highlight the flaws of a conceptual framework that fails to distinguish between information available at arrival in the ED and information available at discharge from the ED."

Yet the Harvard Pilgrim diagnosis code list perpetuates this flawed conceptual framework by containing numerous instances of diagnoses that can share the same symptoms as much more dangerous or life-threatening conditions. These include acute upper respiratory infection, abdominal contusion, throat contusion, various eye conditions, acute pharyngitis, contusion of thorax, and Alzheimer's Disease.

Delayed Care

We are concerned that this new policy by Harvard Pilgrim will have a chilling effect on patients' decisions to seek care, whether for themselves or for a loved one. It will take hearing only a few stories of neighbors, friends, or co-workers who were unexpectedly left with paying a large additional co-insurance after Harvard Pilgrim decided after-the-fact they shouldn't have sought care in an emergency department to make policy-holders think twice about seeking care in an emergency. Such hesitation could be life-threatening or result in even greater costs to the healthcare system down the road. In fact, nearly one in four Americans responding to a poll reported that their medical conditions got worse after they delayed visiting an emergency department because they feared their health insurance companies would not cover the costs (Morning Consult 2016).

When facing their own or a loved one's illness or injury, Harvard Pilgrim customers in New Hampshire must have the confidence that their decision to seek emergency care will be covered under the plan they've purchased. We ask that you immediately halt implementation of this new policy, and we request a meeting between our organizations to discuss alternatives. Please contact Laura Wooster, MPH, ACEP Associate Executive Director of Public Affairs, at lwooster@acep.org or (202) 370-9298 with any questions about this request or to schedule such a meeting.

Sincerely,

Vidor E. Friedman, MD, FACEP
ACEP President

[2] Raven MC, Lowe RA, Maselli J, Hsia RY. Comparison of Presenting Complaint vs Discharge Diagnosis for Identifying "Nonemergency" Emergency Department Visits. JAMA. 2013;309(11):1145-1153. doi:10.1001/jama.2013.1948