



Sound Policy. Quality Care.

Brian Thompson  
Chief Executive Officer  
UnitedHealthcare  
P.O. Box 1459  
Minneapolis, MN 55440-1459

June 29, 2021

**Re: Retroactive reviews of emergency care by UnitedHealthcare**

Mr. Thompson:

The Alliance of Specialty Medicine represents more than 100,000 specialty physicians and is dedicated to the development of sound federal health care policy that fosters patient access to the highest quality specialty care.

We are writing to express our concerns related to a recently announced policy by UnitedHealthcare (UHC) that will retroactively deny coverage for emergency care. Since its initial announcement, UHC has [decided to delay](#) implementation of the new policy until the end of the pandemic. However, while retroactive denial of care is especially objectionable during a public health emergency, such a policy is *always* harmful for patients, regardless of our national public health status. Thus, we ask you to permanently withdraw this proposal.

Aside from cases of high-level trauma, physical incapacitation, or other clear crises (car accidents, gunshot wounds, stroke, etc.), patients often enter the emergency department precisely because they do not have the expertise to determine on their own whether a medical issue needs immediate care, which is why Congress enacted and subsequently built upon the “prudent layperson” standard. Submitting a layperson’s best judgment made in real time – by definition during a moment of stress, confusion, and fear – to a review by experts who have the benefit of hindsight amounts to nothing more than an excuse to deny emergency claims.

We believe this is exactly the type of practice Congress was trying to avoid. The prudent layperson standard, as enshrined in federal law, requires insurers to cover care in situations where a “prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in [...] placing the health of the individual (or a pregnant woman or her unborn child) in serious jeopardy,” among other listed outcomes. By definition, any retroactive review that relies on “intensity of diagnostic services performed,” as the new UHC policy would, violates the prudent layperson standard, since few laypersons have the benefit of diagnostic services at home to evaluate whether their medical emergency requires immediate attention. The UHC policy clearly seeks

to look the final outcome or diagnosis and deny the emergency claim based thereon, which violates the letter and the spirit of the critical patient protections contained in the standard.

The policy attempts to circumvent UHC's violation of the prudent layperson standard by allowing a facility to submit an "attestation" for any emergency event that is retroactively determined by UHC to be non-emergent. Such an attestation creates yet more administrative burden on providers with no benefit to patients. Even more importantly, a retroactive attestation by the provider is incompatible with the prudent layperson standard, which rests on patients' decision-making at the time they seek emergency care.

Additionally, the new policy may result in increased utilization of diagnostic services in the emergency department. As noted above, in the proposed policy, UHC states it will evaluate ED claims based on several factors, including the "intensity of diagnostic services performed." This will encourage emergency department staff to conduct the broadest array of testing available, as more intense testing may protect the patient from having to pay out-of-pocket for the entire visit. This is surely not the intended effect nor is it supporting efforts to move our health care system toward efficient, value-based care performed in the best interests of the patient.

Finally, we would be remiss not to highlight that UHC is gaining a reputation for retroactive denials in other fields of medicine as well, including for infused medications. This is particularly galling in light of the extensive pre-approval requirements patients often must go through to access these treatments, such as step therapy or prior authorization.

In light of the above concerns, we urge UHC to *permanently* withdraw its new emergency department denial policy. Please contact any of the undersigned organization, should you have questions or require additional information.

Sincerely,

American Association of Neurological Surgeons  
American College of Osteopathic Surgeons  
American Gastroenterological Association  
American Society of Cataract and Refractive Surgery  
American Society of Echocardiography  
American Society of Plastic Surgeons  
American Society of Retina Specialists  
Coalition of State Rheumatology Organizations  
Congress of Neurological Surgeons  
North American Spine Society