April 21, 2017

VIA EMAIL
Susan Mosier, MD
Secretary, Division of Public Health
Kansas Department of Health and Environment
Kansas Medicaid / KanCare
Curtis State Office Building
1000 SW Jackson
Topeka, KS 66612

Email: susan.mosier@ks.gov

Re: KanCare Reimbursement – Appropriate Reimbursement of Emergency Medical Services

Dear Secretary Mosier:

I am writing on behalf of the Kansas Chapter of the American College of Emergency Physicians (KS ACEP), and its sister organization, the American College of Emergency Physicians (ACEP), both of whom represents emergency department physicians who treat patients throughout the state of Kansas, and the Emergency Department Practice Management Association (EDPMA), whose membership includes emergency medicine physician groups, billing, coding and other professional support organizations that assist healthcare providers in our nation's emergency departments.

Our physicians are proud of our essential role in strengthening the health care safety net for the citizens of the State of Kansas and importantly, our commitment and dedication to the overall vitality of the Kansas Medicaid program and KanCare.

As you may know, emergency physicians, as required under federal law, and in accordance with the Emergency Medical Treatment and Labor Act (EMTALA)[1] have an obligation to provide

[1] 42 U.S. Code § 1395dd - Examination and treatment for emergency medical conditions and women in labor

diagnostic screening and stabilizing treatment to all persons presenting for emergency care at a hospital emergency department, irrespective of that patient's insurance status or ability to pay for those services. Further, in accordance with federal statutes, Medicaid patients who believe they are experiencing an emergency medical condition, including, but not limited to an illness or injury, which that patient reasonably believes could cause him or herself, or his or her minor child, bodily injury or serve illness, including the presence of severe pain, is free to seek out emergency care, and may do so unencumbered and uninhibited by policies which may have the intended effect of restricting that individual's access to emergency services. This doctrine is commonly referred to as the 'prudent layperson standard[2]'.

Additionally, the prudent layperson standard obligates Medicaid carriers and managed care organizations (MCOs) to reimburse emergency medical providers for the delivery of emergency medical services and care to Medicaid recipients.[3] In that regard, we have growing concerns that certain Medicaid managed care organizations operating as part of the Kansas' Medicaid system (KanCare) are not reimbursing emergency physicians in a manner that is consistent with this federal standard. Our concerns particularly relate to retrospective denials by which certain KanCare MCOs have determined, retrospectively, after emergency medical services treatment and care has been rendered to the patient. Those retrospective determinations assert that the conditions by which the patient sought out emergency services did not constitute an emergency medical condition. Consequently, these particular cases are deemed 'non-emergent' and are not reimbursed in accordance with the KanCare promulgated reimbursement rates, resulting in drastically reduced reimbursement at rates as low as $13.00.

In addition to this issue of retrospective reimbursement determinations, we are finding that certain KanCare MCOs have created and implemented lists of symptoms, conditions and diagnosis codes but which we have little transparency and no clear sense on the basis for the determination on those codes the MCOs deem non-emergent.

Further, we believe it is essential to offer providers of emergency medical services an opportunity to readily and reasonably appeal such unilaterally determined outcomes that affects both the provider and the patient's access to care. Lastly, we believe that emergency medical providers should have an opportunity to contribute and participate in the design and implementation of such diagnostic coding lists to ensure that they're properly built and reflective of clinical standards of care and patient interests in mind.

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[2] 42 CFR 438.114 - Emergency and post-stabilization services.

[3] Balanced Budget Act of 1997

Attached to this letter, we are providing several examples of cases deemed non-emergent by certain KanCare MCOs, which resulted in payer altered reimbursement which we believe is inconsistent with prudent layperson standards.

We understand that KanCare and the KanCare Medicaid MCOs have an overly burdensome appeals process that can be utilized in these kinds of situations, but we find that working within the appeals process established is needlessly inefficient, expensive, and time consuming, particularly when individual claims need to be appealed for resolution of small dollar amounts (though in the aggregate, the impact to our providers is significant).

As a result, we request an opportunity to discuss these issues jointly with your staff and with appropriate representatives of your approved managed care entities. Our hope would be to work toward solutions on these issues in an amicable fashion. In addition, we would enjoy an opportunity to lay additional groundwork with you on how we believe we can actively partner with you on initiatives that would provide savings to the Kansas Medicaid system.

Please feel free to reach out to Elizabeth Mundinger or Harry Monroe by email or at the phone number listed below. One of us will also seek to follow up with you within the next week.

Thank you for your attention and consideration of these issues of importance to our patients and to the Kansas healthcare safety net.

Sincerely,

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