



April 11, 2024

Emily Zalkovsky
State Medicaid Director
Texas Health and Human Services Commission
4601 W. Guadalupe Street
MC H100
Austin, TX 78751

RE: Incorrect Down-Coding Per Prudent Layperson (PLP) Review for Managed Care Organizations (MCOs)

Dear Director Zalkovsky,

I am writing on behalf of members from the Emergency Department Practice Management Association (EDPMA) to address a concerning issue regarding the down-coding of emergency department claims by Managed Care Organizations (MCOs) within your Medicaid Program's purview.

EDPMA's membership includes emergency medicine physician groups of all ownership models and sizes, as well as billing, coding, and other professional support organizations that assist healthcare providers in our nation's emergency departments. Together, EDPMA's members deliver or directly support health care for about half of the 146 million patients that visit U.S. emergency departments each year.

It has come to our attention that certain MCOs, such as Amerigroup and Superior Healthplan, have been incorrectly down-coding emergency department claims based on diagnosis codes listed in an auto-pay list unilaterally approved by the MCO, contradicting the published AMA CPT and CMS coding guidelines. As you are aware, hospital emergency departments are mandated by the Emergency Medical Treatment and Labor Act (EMTALA) to conduct medical screening examinations for every individual seeking medical attention, without discrimination based on diagnosis or ability to pay.

Regrettably, these down-coding practices by MCOs may interfere with emergency departments' ability to comply with EMTALA guidelines. Specifically, 42 CFR 438.114(d)(1)(i) stipulates that MCOs “*should not limit the definition of an emergency medical condition based on predefined lists of diagnoses or symptoms.*”¹ This regulation was underscored in a State Medicaid Director letter dated April 18th, 2000; “*The determination of whether the prudent layperson standard is met must be made on a case-by case basis. The only exceptions to this general rule are that payers may approve coverage on the basis of an ICD-9 code, and payers*

¹ <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-C/part-438/subpart-C/section-438.114>

may set reasonable claim payment deadlines (taking into account delays resulting from missing documents from the initial claim). Note that payers may not deny coverage solely on the basis of ICD-9 codes. Payers are also barred from denying coverage on the basis of ICD-9 codes and then requiring resubmission of the claim as part of an appeals process. This bar applies even if the process is not labeled as an appeal. Whenever a payer (whether an MCO or a State) denies coverage or modifies a claim for payment, the determination of whether the prudent layperson standard has been met must be based on all pertinent documentation, must be focused on the presenting symptoms (and not on the final diagnosis), and must take into account that the decision to seek emergency services was made by a prudent layperson (rather than a medical professional).”²

Furthermore, pursuant to a federal court order³, the Virginia Medical Assistance Program and Managed Care Organizations (MCOs) have removed their “*Downcoding Provision*” from all MCO contracts. The court asserted that “*the failure to explain its decision is of particular concern because the Centers for Medicare and Medicaid Services (CMS) own preexisting regulations and guidance cast direct doubt on the lawfulness of the downcoding provision.*”⁴ We urge the to thoroughly review and reinforce compliance standards for MCOs in order to prevent inappropriate down-coding of emergency hospital claims. It is imperative that MCOs operating within your program do not impede emergency departments from fulfilling their legal obligations under EMTALA.

We respectfully request that the Texas Health and Human Services Commission respond to us regarding the actions being taken to address this critical issue with MCOs. We are keen to collaborate with you to ensure that all parties involved uphold the highest standards of care and compliance. Thank you for your attention to this matter. We look forward to your prompt response.

Sincerely,

Andrea Brault

Andrea Brault, MD, MMM, FACEP

Chair

Emergency Department Practice Management Association

² <https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/downloads/smd041800.pdf>

³ <https://vamedicaid.dmas.virginia.gov/bulletin/processing-and-payment-emergency-room-claims-effective-april-27-2023>

⁴ <https://valawyersweekly.com/2023/05/25/approval-of-reimbursement-provision-arbitrary-capricious-2/>