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New Ruling Affirms Insurer ED Policy Violates Federal Law

An arbitrator in Indiana has made clear that an insurer's policy to deny or underpay claims for emergency services based on the diagnosis on the claim form is a violation of federal and state law. In its decision, the arbitrator ordered that Anthem pay a group of 11 acute-care hospitals in Indiana compensation of $4.5 million.

Hospitals in Wisconsin and across the country have been increasingly concerned about attempts by insurance companies to refuse to pay hospitals for the emergency services they provided after the fact if the final patient diagnosis was for what they deemed a non-emergent service.

Under federal law, whether a patient has an emergency medical condition is dependent upon what is known as the "prudent layperson standard." Under this standard, which is applicable under both federal law and state law in Wisconsin, if a reasonable person with an average knowledge of health and medicine thinks his or her health is in jeopardy based on his or her symptoms, then it is an emergency medical condition. Because the focus is on the reasonableness of the patient's decision to go to the emergency department (ED)—and not on whether the patient was experiencing an actual medical emergency—federal regulations explicitly prohibit a health plan from determining what constitutes an emergency medical condition based on a list of diagnoses or symptoms.

While Anthem has not implemented their ED policy in Wisconsin, one year ago hospitals were concerned about a similar policy from UnitedHealthcare. After significant push back, United rescinded its policy.