

# Lawsuit Against Anthem Aims To Protect Patients From Insurer's Bad Policy



By *Jamie Wells, M.D.* — July 31, 2018



Credit: Pixabay [1]

It is very hard to view health insurers and their actions through an altruistic and caring lens when one of their own simply cannot stop making bad policy. Anthem, it appears, just can't help itself these days when it comes to endangering patients and opposing prioritizing patient safety. Look no further than their multi-state effort to place the burden on the patient to self-diagnose what is a true emergency by holding them financially responsible for all expenses if the ultimate diagnosis doesn't support an ER visit. This policy is so egregious that the American College of Emergency Physicians (ACEP) and the Medical Association of Georgia are pushing back by filing a federal lawsuit, [insisting](#) [2] it "has caused "providers and patients alike" to operate "in fear of denial of payment" by the insurance company."

The legal maneuver challenges the carrier who rolled out this punitive measure last year to several states and, after much backlash, doubled down by expanding it to more this year. Focusing on the "[prudent layperson](#)" [3] rule among others, the litigation emphasizes that such a policy of penalizing the patient for guessing wrong violates the known standard that an insurer must cover emergency care for the average person who seeks emergent treatment believing it is necessary to avoid dire consequence. Symptoms guide the standard, not the resultant diagnosis. The doctor's final diagnosis is what Anthem retroactively is basing its refusal for coverage.

Anthem is no stranger to putting up a fight. As per [Modern Healthcare](#) [4]

*"Anthem Blue Cross and Blue Shield of Georgia has been sued over the ED policy*

*before. In February, Atlanta-based Piedmont Hospital and five sister hospitals filed lawsuits claiming Anthem's policy of denying coverage for non-emergency ED visits after the fact violates Georgia law. But while Anthem [tweaked the ED program in February](#) <sup>[5]</sup> in response to outrage from state legislators and the public, it has refused to rescind it... Notably, the lawsuit mentions that Anthem Blue Cross and Blue Shield of Missouri's senior clinical officer, Dr. Jay Moore, said in a meeting with ACEP officials that 30% to 40% of ED visits are avoidable. But the Centers for Disease Control and Prevention [has estimated that just 4.3%](#) <sup>[6]</sup> of ED visits in 2014 were for non-urgent symptoms.”*

This recent lawsuit is expected to be the first of many by ACEP – the group will likely extend it to other states.

### **Why is it a bad policy?**

Anthem is not unfounded in their desire to curtail well-known abuse of the emergency room for non-emergent conditions. However, their approach to limiting their coverage to those who turn out not to have a true emergency, for example, is a bit misguided. Abdominal pain, for instance, in a female can be quite complicated as the origin can range from the gastrointestinal to reproductive systems. Certain conditions like an ovarian torsion which warrants urgent surgical intervention should never be delayed to the point the ovary loses such blood flow it begins to die. Such an occurrence could lead to loss of the organ thereby impairing fertility or even incurring sepsis. The pain experienced can mimic other things. There is no way a patient can know what the origin of their discomfort is without proper testing and the stakes with a condition like this are too high.

Playing Monday morning quarterback with these and other complaints like chest pain could compel those who absolutely need care to avoid seeking it. [Adding](#) <sup>[7]</sup> an inclusion of coverage criteria to those sent to the ER by ambulance will likely amount to more individuals tying up emergency services to guarantee their ER visit is covered which in the end only contributes to greater expense.

Asking a patient to discern what is life-threatening and what isn't without any medical education is ill-conceived on many fronts. First, it is dangerous. Second, it can contribute to longer term disability and escalate the interventions necessary to treat a condition that might have been more easily managed if delays in seeking care result. Third, maybe start focusing on more ideal measures like ones that encourage expanding urgent care facilities adjacent to emergency rooms or in close proximity so they can best triage the situation or incentivize and support practitioners to extend their office hours when possible.

### **For some reason, Anthem is emboldened to practice medicine without a license**

Another of the company's recent policies is to put the onus of performing and monitoring not only cataract surgery, but also anesthesia on the ophthalmologist in a number of situations. A surgeon should be focused on surgery and the body part on which he or she is operating and should not have to monitor and sedate the patient while performing complex and delicate ocular procedures.

This is especially disturbing since many of these operations occur in the elderly population who typically have complicating co-morbidities and are more clinically fragile. (To learn more, read [here](#) [7]).

### **In the end**

Anthem is giving us every reason to question the motives of health insurers. Maybe it is time to rethink their purpose. (To read more on the data abuses by carriers to limit your coverage, read [here](#) [8]).

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### **Links**

[1] <https://pixabay.com/en/no-money-poor-money-no-crisis-2070384/>

[2] <https://www.aarp.org/health/health-insurance/info-2018/er-doctors-sue-anthem.html>

[3] <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-anthem-er-20180124-story.html>

[4] <http://www.modernhealthcare.com/article/20180717/NEWS/180719919>

[5] <http://www.modernhealthcare.com/article/20180421/NEWS/180429976>

[6] <http://www.modernhealthcare.com/article/20171202/NEWS/171209981>

[7] <https://www.acsh.org/news/2018/02/21/anthem-now-wants-your-eye-surgeon-double-your-anesthesiologist-12604>

[8] <https://www.acsh.org/news/2018/07/25/call-it-what-it-health-insurers-use-your-data-discriminate-against-you-13227>