California Medical Association
Physicians dedicated to the health of Californians

February 1, 2018

Dave Jones
Insurance Commissioner, California Department of Insurance
300 Capitol Mall, Suite 1700
Sacramento, CA 95814

Via U.S. Mail

RE: Anthem Clinical UM Guideline CG-MED-60

Dear Commissioner Jones,

The California Medical Association (CMA), representing more than 43,000 physician and medical student members, is writing to express grave concerns with a recent Anthem Blue Cross clinical policy change to Clinical UM Guideline CG-MED-60 Anesthesia for Cataract Surgery (attached), which, effectively, restricts the use of intravenous anesthesia to sedate the patient during cataract surgery by deeming common forms of sedation as "not medically necessary." We believe that such a drastic change in clinical policy will cause significant patient safety risks, up to and including blindness, and conflicts with Anthem's obligations under Insurance Code §10112.27(a) to cover essential health benefits. CMA is further concerned that with the implementation of this policy, which became effective on December 27, 2017, Anthem is in violation of Insurance Code §10133.65(c) because it does not appear to have complied with the material change prior notice requirement. Accordingly, we respectfully request that the Department urgently investigate Anthem's practices and policies relating to UM Guidelines CG-MED-60 and require Anthem to urgently rescind its policy.

During cataract surgery, most patients receive topical and intracameral anesthesia directly in the eye in order to numb the eye. However, these forms of anesthesia procedures only numb the eye and do not sedate the patient. Intravenous anesthesia is commonly used to complement the local and topical anesthesia in order to optimize the patient's surgical experience, cooperation and outcome. Intravenous anesthesia to sedate the patient is frequently vital to allow the patient to relax and avoid movement that could be catastrophic. Many patients' anxiety levels are so high that they must be sedated so that the physician can safely perform the cataract procedure. Intravenous anesthesia is administered by an anesthesiologist, separate from the operating surgeon, who monitors the patient's systemic status. Indeed, it is rare that a patient who is undergoing cataract surgery receive only eye drop anesthesia to numb the eye without any type of intravenous anesthesia to sedate the patient.

However, the new Anthem policy now restricts, except in very narrow circumstances, use of intravenous anesthesia to sedate the patient during cataract surgery. Anthem patients wishing to have any form of intravenous anesthesia during the procedure will now be forced to pay out of pocket. This could result in patients delaying or forgoing medically necessary services due to their inability to cover the out-of-pocket costs.

The California Academy of Eye Physicians and Surgeons' (CAEPS) recently expressed similar patient safety concerns with the policy in a letter to Anthem (attached). In the letter, Dr. Craig Kliger, Executive Vice President of CAEPS, states:

> "The cataract procedure is carried out in a tiny space, roughly about a third of the size of a thimble, using a needle vibrating at ultrasonic speeds that can cause blindness if it contacts the wrong structures. Sedation is frequently vital to allow the patient to relax and ***avoid movement*** that could be catastrophic, thus ***minimizing risk***."

With this policy change, Anthem has effectively decided that rather than allowing the treating physician, in discussion with his or her patient, to make the medical decision that is best for that patient, that it can unilaterally decide which patients can receive intravenous anesthesia during cataract surgery.

It's important to note that while Anthem cites the American Academy of Ophthalmology's (AAO) Preferred Practice Pattern document (attached) as a reference in support of its policy change, the change appears to conflict with the AAO's policy. In fact, in its letter to Anthem, CAEPS stated, "…we believe Anthem is misinterpreting the document, and that proper interpretation would lead to the opposite conclusion." Further, the AAO document referenced by Anthem states that the "type of anesthesia management should be determined according to the patient's needs, the preference of the patient, the anesthesia professionals, and the surgeon."

Anthem's policy change also appears to conflict with Insurance Code §10112.27(a) which provides that an individual or small group health care service plan contract shall, at a minimum, include coverage for essential health benefits (EHB) pursuant to the Patient Protection and Affordable Care Act (ACA). The ACA provides that the Secretary of the Department of Health and Human Services shall define the essential health benefits, but also sets forth minimum general categories that shall be included in the EHB. 42 USC §18022(b); Insurance Code §10112.27(a)(1). The Secretary of the Department of Health and Human Services provides in regulation that each state may identify a single EHB-benchmark plan according to specified selection criteria. 45 CFR §156.100. California adopted the Kaiser Foundation Health Plan Small Group HMO 30 plan as its EHB-benchmark plan. Insurance Code §10112.27(a)(2)(1). California's EHB-benchmark plan includes outpatient care and outpatient surgery physician/surgical services as a covered benefit. Excluding services integral to outpatient care and surgical services, such as intravenous anesthesia, from the covered benefits would substantially limit essential health benefits that Anthem must provide pursuant to California's EHB-benchmark plan.

Lastly, we request that Department investigate and confirm whether or not Anthem provided prior notice of its policy change as required by Insurance Code §10133.65(c), which requires plans to provide 45-business days' notice to the provider prior to changing any material term of the contract or prior to materially amending a manual, policy, or procedure document referenced in the contract. A change is defined as "material" in Insurance Code §10133.65(h)(3) if a reasonable person would attach importance in determining the action to be taken upon the provision. Certainly, ophthalmologists and anesthesiologists contracted with Anthem would

attach importance in determining whether to continue contracting in light of the new policy. CMA has received reports from physicians that they did not receive the required notice from Anthem.

We respectfully request that the California Department of Insurance investigate Anthem's anesthesia/cataract surgery medical policy, which we believe may jeopardize patient safety and violate California law and require Anthem to rescind the policy retroactive to the effective date. If you have any questions or want to discuss this issue in more detail please do not hesitate to contact CMA staff, including Jodi Black at (916) 551-2863 and Stacey Wittorff at (916) 551-2552.

Respectfully,

Theodore M. Mazer, MD
CMA President

David H. Aizuss, MD
CMA President-Elect

Enclosures:
California Academy of Physicians and Surgeons January 19 letter to Anthem
American Academy of Ophthalmology Cataract in the Adult Eye Preferred Practice Pattern
Anthem Clinical UM Guideline CG-MED-60

cc: Janice Rocco, Deputy Commissioner, Health Policy and Reform, CDI
cc: John Yao, MD, Staff Vice President of Medical Policy & Technology Assessment, Anthem
cc: Francisco J. Silva, CMA General Counsel and Senior VP