



Charles N. Kahn III  
President and CEO

June 10, 2021

Mr. Brian Thompson  
Chief Executive Officer  
UnitedHealthcare  
P.O. Box 1459  
Minneapolis, MN 55440-1459

Dear Mr. Thompson:

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, D.C and Puerto Rico. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

FAH members are dedicated to serving UnitedHealthcare's (UHC) enrollees every day across the country. As such, we are extremely disappointed in UHC's announcement of a new coverage policy for retroactive denial of emergency care services effective July 1, 2021. We are aware that UHC announced today a temporary delay of implementation until at least the end of the national COVID-19 public health emergency (PHE).<sup>1</sup> While the delay is appreciated, this temporary pause does not address the underlying policy that poses harmful and unnecessary risk to patients, regardless of its date of implementation.

**Therefore, we urge you to immediately and permanently rescind this policy in order for your members to be assured that they will not be inhibited from seeking essential health care services.**

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<sup>1</sup> <https://www.nytimes.com/2021/06/10/health/united-health-insurance-emergency-care.html?smid=tw-share>

Frankly, the FAH has numerous and significant concerns about UHC’s announced non-coverage policy for emergency room services. Retroactively denying emergency care is detrimental to patients. UHC plan members are not in a position to make a medical determination before seeking care and cannot be expected to self-diagnose to determine whether or not to seek care from a hospital emergency room. UHC’s policy will create a chilling effect that could put a patient’s health and potentially even their life in peril. And coming on the heels of the COVID-19 PHE which has caused patients to delay needed care already, including emergency care, the policy only adds unneeded stress to a dangerous risk for patients.

Further, UHC’s retroactive determination of coverage for emergency services is out of compliance with the “prudent layperson” standard under federal law, which protects patients from the barriers this policy presents. If a reasonable individual experiences an emergency medical event, they should not have to face roadblocks to getting reasonable care [nor should they fear that going to the emergency room may result in a new form of surprise bill, especially since Congress recently enacted the *No Surprises Act*, which we support.]

In addition, if a patient presents in an emergency room with an emergency condition, EMTALA law requires that the patient be screened and stabilized.<sup>2</sup> From a clinician’s perspective, a patient could have any number of life-threatening conditions related to the symptoms they are exhibiting. When a patient enters the emergency department, neither the patient nor the physician knows the diagnosis, and the clinician is obligated to act under the EMTALA law. UHC’s policy stands this law on its head: under the UHC policy, the patient presumably would be placed in a position to self-diagnose before seeking care and the clinician would have to diagnose the patient without conducting the proper screening and stabilizing, possibly leading to turning the patient away from emergency room care they may need and by law are required to receive.

The policy also will create confusion for patients, especially compared to existing UHC guidance to enrollees, which directs them not to ignore an emergency and to head to the nearest emergency room if a situation seems life threatening.<sup>3</sup> Against the new policy, how will a patient in severe pain know whether a situation “seems life threatening”? And if the patient, out of confusion, determines not to visit an emergency room, how are they expected to address

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<sup>2</sup> Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening examination (MSE) when a request is made for examination or treatment for an emergency medical condition (EMC), including active labor, regardless of an individual’s ability to pay. See CMS, Emergency Medical Treatment & Labor Act (EMTALA), <https://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/>. See also “...we believe that a hospital must be seen as having an EMTALA obligation with respect to any individual who comes to the dedicated emergency department, if a request is made on the individual’s behalf for examination or treatment for a medical condition, whether or not the treatment requested is explicitly for an emergency condition. **A request on behalf of the individual would be considered to exist if a prudent layperson observer would believe, based on the individual’s appearance or behavior, that the individual needs examination or treatment for a medical condition.**” (Emphasis added). 62 *Fed. Reg.* 53,234 (September 9, 2003), <https://www.govinfo.gov/content/pkg/FR-2003-09-09/pdf/FR-2003-09-09.pdf>.

<sup>3</sup> <https://www.uhc.com/member-resources/know-your-care-options/urgent-care>

potentially a very serious risk to their health and life if the emergency happens to occur on a weekend, evening, or “after-hours” when an alternative facility or physician office is not available?

Finally, we note that UHC has announced policies to reduce or eliminate coverage for multiple services, such as certain hospital-based surgeries, laboratory and other diagnostic services, specialty pharmacy therapies, and evaluation and management services, including those provided in the emergency department and that constitute primary care. These broad-based coverage denials could lead to increased UHC enrollee use of emergency departments.

In light of the chilling effect and disastrous results for patients due to UHC’s new policy that retroactively denies emergency room care for patients, we again urge you to rescind the policy in its entirety and put patients first by working with the FAH and other hospital organizations to ensure your enrollees receive the reliable, high-quality care they deserve and believe that they have purchased.

Sincerely,

A handwritten signature in black ink, appearing to read "Nigrah", written over a horizontal line.