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April 15, 2022

Charles R. Sowder, MD
Medical Director, Kentucky Medical Management at Anthem
Anthem Blue Cross Blue Shield
13550 Triton Park Blvd
Louisville, KY 40223

Sent via email: Charles.Sowder@anthem.com

Dear Dr. Sowder,

We are contacting you on behalf of several organizations, including the American Academy of Sleep Medicine (AASM), a professional medical society that represents over 10,000 sleep medicine clinicians and sleep centers and is dedicated to advancing sleep care and enhancing sleep health to improve lives; the Alliance of Sleep Apnea Partners (ASAP), a patient-led organization that focuses on educating patients, caregivers, healthcare providers, and the public about sleep apnea causes, symptoms, therapies, and risks; and the Hypersomnia Foundation, which engages, informs and champions our global community to improve the lives of people with idiopathic hypersomnia and related sleep disorders.

An AASM member recently reached out to AASM expressing their concern about Anthem Blue Cross Blue Shield of Kentucky's lack of adherence to the Kentucky Department of Insurance Telehealth Remote Communications guidance, amid the ongoing national Public Health Emergency (PHE). The Kentucky Department of Insurance issued guidance on March 18, 2020, which clearly states the following:

The Department waives the requirements of KRS 304.17A-005(47)(c) pursuant to federal guidance issued by the Office for Civil Rights and the Department for Health and Human Services, which can be located at <https://www.hhs.gov/hipaa/for-professionals/specialtopics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>. The Department will not impose penalties for noncompliance with KRS 304.17A-005(47)(c) in connection with the good faith provision of telehealth using such non-public facing audio or video communication products.

The guidance also states that:

In order to reduce personal contacts pursuant to Novel Coronavirus (COVID-19) Guidance for Kentucky Residents,
<https://chfs.ky.gov/agencies/dph/covid19/guidanceforkentuckyresidentscovid19.pdf>, *insurers cannot require that the patient have a prior relationship with the provider in order to have services delivered through telehealth, if the provider determines that telehealth would be medically appropriate.*

Despite this guidance, which is still active, Anthem Blue Cross and Blue Shield of Kentucky has revised the Telephonic-only care policy to only cover telephonic-only visits with in-network providers through April 16, 2022, while out-of-network coverage will be provided where required by law. This policy includes covered visits for mental health or substance use disorders and medical services, for our fully-insured employer plans, individual plans and Medicaid plans, where permissible, according to the Provider Communication, shared on February 14, 2022.

In addition to the policy published by the Kentucky Department of Insurance, the Centers for Medicare and Medicaid Services (CMS) is retaining all services added to the Medicare telehealth services list on a temporary basis through December 31, 2023. due to the COVID-19 PHE. The CMS extension of the telehealth exemptions allows the agency to collect more data regarding utilization of these services during the PHE, while providing stakeholders the opportunity to make a case for permanent addition of these services, as appropriate.

We believe that the Anthem Blue Cross and Blue Shield of Kentucky's termination of the telehealth exemptions during the national PHE unduly disadvantages medical providers and their patients by limiting access to high-quality care and by extension, coverage for needed medical services via telehealth, including via telephonic-only visits, in this scenario. The AASM, ASAP, and the Hypersomnia Foundation encourage Anthem Blue Cross and Blue Shield of Kentucky to align with the Kentucky Department of Insurance and CMS policies, during the ongoing PHE and extend the telehealth service exemptions through the end of December 2023.

AASM, ASAP, and the Hypersomnia Foundation appreciate your consideration of this request to extend the telehealth exceptions. If you have any questions about this issue or require any additional information, please contact AASM Director of Health Policy, Diedra Gray, at (630) 737-9700 or dgray@aasm.org.

Sincerely,

Raman Malhotra, MD
AASM President

Sarah Gorman
ASAP President

Michelle A. Emrich, MD
Hypersomnia Foundation Board Member