



COLLEGE of AMERICAN PATHOLOGISTS

August 2, 2018

Thomas Betlach
Director, Arizona Health Care Cost Containment System
801 E. Jefferson Street
Phoenix, AZ 85034

Dear Director Betlach:

I am writing on behalf of the College of American Pathologists (CAP) and the Arizona Society of Pathologists (ASP) to inquire about the application of A.A.C § R9-22-705 (A) (2), set forth below, to out-of-network anatomic pathology services (biopsies) provided to Arizona Health Care Cost Containment System (AHCCCS) covered patients:

“(2) A contractor shall reimburse a noncontracting provider for services rendered to a member enrolled with the contractor as specified in this Article if:

- a. The contractor referred the member to the provider or authorized the provider to render the services and the claim was otherwise payable under this Chapter, or
- b. The service is emergent under Article 2 of this Chapter.”

Question 1: Under this provision of regulation set forth above, are managed care organizations (MCOs) providing Medicaid services under contract with AHCCCS, required to make payment to providers of pathology services who are not under contract with the Managed Care Organization, when the pathology services are timely needed in accordance with best medical practices? Furthermore, is the Department’s position that AHCCCS contractors are required, under A.A.C § R9-22-705 (A)(2), to pay pathologists not under contract with the AHCCCS MCOs, absent authorization for the out-of-network pathology service by the MCO and absent it being considered an emergency or “emergent” clinical circumstance as construed under Article 2 of the Chapter?

Of relevance we note that the federal regulatory standard (42 CFR 438.206 (b) (4) - Availability of services) for required coverage of these services by MCOs, PIHPs or PAHPs providing covered Medicaid Services is as follows:

(4) If the provider network is unable to provide necessary services, covered under the contract, to a particular enrollee, the MCO, PIHP, or PAHP must adequately and timely cover these services out of network for the enrollee, for as long as the MCO, PIHP, or PAHP's provider network is unable to provide them. (underscore added)

We are posing this question because pathologists in Arizona are seeing an increasing number of clinical situations wherein individuals enrolled in Arizona Medicaid Managed Care administered by AHCCCS are medically required to be serviced by out-of-network pathologists because of the refusal of certain MCOs to contract with pathologists for their services.

In some cases, the pathologist rendered anatomic pathology services undoubtedly meet the federal requirements for “adequate and timely” necessity, but do not appear to meet the



Arizona regulatory requirements as cited above. For example, in certain extreme cases of advanced or aggressive malignancies, timely turnaround for biopsies and second opinion consults are critical where treatment and procedure decisions must be optimally made in days, if not hours. In these cases, delay may impair the quality and accuracy of the diagnostic finding, optimal therapeutic selection and treatment initiation, and, moreover, also inflict mental anguish on the patient.

Alternatively, in these cases, the MCOs would require diversion of specimen referrals to in-network pathologists with concomitant, and potentially inordinate, delay in diagnostic assessment that should not be considered by AHCCCS to be “adequate or timely” for these services in accordance with best medical practices. Given the legal preeminence of the federal regulatory standard which requires “adequate and timely” provision of services, we are seeking some clarification from AHCCS regarding the application of A.A.C § R9-22-705 (A) (2) to non-emergent, but medically necessary, out-of-network anatomic pathology services that must be performed in a timely or urgent manner without the prior authorization of the AHCCCS contracted MCO in which the patient is enrolled.

Of further concern to the pathology community, is the regulatory standard the Department is using to evaluate MCOs for pathologist network adequacy. Specifically, we note that AHCCCS communicated with the Centers for Medicare & Medicaid Services (CMS) in 2016, regarding proposed Medicaid Managed Care network adequacy that:

“the primary indicators of access to care are provider participation based on population size served by the Medicaid program, appointment availability, delays in obtaining appointments and number of providers accepting new patients.”¹

“it would be most appropriate to target a core set of measures by service. Core measures must be by service type and preferably focusing on primary care services. There is a lot of variability with respect to specialty services, such as expectations based on condition, healthcare status of the individual being served, evidence based guidelines for care, etc. Access to specialists would create unique challenges for measurement purposes.”²

It is clear that these AHCCCS comments to CMS are highly primary care centric and evince no rigorous nor particular methodology for evaluating MCOs for pathologist network adequacy in which the patient is not directly seen by the provider in a clinical encounter.

Question 2: Accordingly, can you provide us with some clarification on the use of network adequacy criteria by AHCCCS to determine whether patients enrolled in MCOs under contract with AHCCCS for services are determined to have “adequate and timely” access to anatomic pathology services?

This inquiry, in its entirety, is being made out of clinical concern that MCOs under contract with AHCCCS may be failing to contract with community and hospital based pathologists,

¹ Correspondence of Thomas J. Betlach, Director, AHCCCS, to Centers for Medicare and Medicaid Services (CMS), Re: Arizona Comments to File Code CMS-2328-FC; Final Access to Care Rule and File Code CMS-2328-NC; CMS request for information (RFI) both Published November 2, 2015, dated January 4, 2016 (Page 3).

² Ibid.



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especially in rural areas, and thereby failing to ensure that their enrollees have “adequate and timely” access to medically necessary pathology services.

Thank you for your courtesies and consideration of this inquiry. We look forward to the response of AHCSS.

Sincerely,

Joe Saad, MD. FCAP
Chair, Federal & State Affairs Committee
Sent Via email Tom.Betlach@azahcccs.gov

cc: Christopher John Stasik, DO, FCAP, President, Arizona Society of Pathologists
Barry R. Ziman, Director, Legislation & Political Action, CAP