COLLEGE of AMERICAN PATHOLOGISTS

December 20, 2019

Lesley Scheske
Assistant Vice President
Network Management North Texas and Oklahoma
Aetna Inc.

Dear Ms. Scheske:

The College of American Pathologists (CAP) urges Aetna to reverse recent policy changes to the reimbursement policy for modifier 26, and to continue payment for the professional component of clinical pathology ("PC of CP") services for all pathologists. As the world's largest organization of board-certified pathologists and leading provider of laboratory accreditation and proficiency testing programs, the CAP serves patients, pathologists, and the public by fostering and advocating excellence in the practice of pathology and laboratory medicine worldwide.

The PC of CP services are critical to the reliable and accurate diagnosis and treatment of patients, particularly in delivery systems increasingly reliant upon care coordination, integration, and population management. The CAP's Policy on Pathologist Professional Component Billing for Clinical Pathology Services (attached) describes the nature and type of professional services provided by the physician director of a clinical laboratory. As set forth in that policy, pathologists as directors of hospital laboratories spend a significant amount of time and effort fulfilling their responsibility for quality laboratory services to their patients and their fellow practitioners. The pathologist is professionally responsible and legally accountable for their laboratory's results. In preparation for this responsibility, pathologists complete a specific medical residency program. Moreover, federal certification standards and The Joint Commission standards require certain professional, organizational, and administrative services be provided in the clinical laboratory to assure quality laboratory services to patients.

It is the significance of the services provided by the pathologist-director that has warranted their recognition by the Centers for Medicare & Medicaid Services (CMS) as described below. For Aetna to discontinue reimbursement for these services will prove detrimental to patients, and to the integrated delivery of care to which laboratory diagnostic services are central.

The CMS recognizes the PC of CP services by their inclusion in the Part A payment Medicare makes to hospitals for each patient. As you know, for each patient, Medicare pays the hospital based on the patient's diagnosis related group or DRG. A payment amount is assigned to each DRG, which is for the full spectrum of services received by the patient, including PC of CP services. Hospitals are then to pay pathologists for such services at fair market value for such services.

As described above, discontinuing reimbursement for PC of CP services billed with modifier 26 is inconsistent with its recognition by CMS. It is also inconsistent with results of recent litigation. Some of these recent results include:

- Palmetto Pathology Services v. Health Options, Inc. -- The Florida Supreme Court's declining to review the decision of the Florida appellate court in the

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Palmetto case represented the judicial conclusion in favor of Palmetto Pathology Services and the 10 other groups that had been joined in the suit brought against Blue Cross Blue Shield of Florida's HMO, Health Options in 2005.

As of early 2009, Palmetto's attorneys had already collected the judgment and Health Options had paid Palmetto approximately $1.5 million in damages for non-payment of professional component of clinical pathology claims, including interest. The case has been characterized as not only very favorable for pathologists in Florida, but also as a paradigm changer for future HMO direct payments to pathologists for the professional component of clinical pathology services under Florida law. The CAP, AMA, and the Florida Medical Association submitted amicus briefs at various stages of the litigation in support of Palmetto.

The case stemmed from the 1999 unilateral decision by Health Options to halt payment for professional component of clinical pathology services. In recognition of professional component of clinical pathology services, the Third District court in this case indicated "'Physician care,' as that term is defined by Florida law, is the 'care, provided or supervised by physicians... and shall include consultant and referral services by a physician'". The court also indicated, "The record here demonstrates that the disputed services include supervisory duties, consultations, and referrals by the physician pathologists."

- Neighborhood Clinics, L.L.C. v. Pathology CHP S.C., et al -- Pathologists once again emerged victorious as an Illinois court upheld the validity and fairness of the practice. In this case, the court ruled that it is fair for pathologists to bill for the professional component of clinical pathology services. The ruling was one of a string of significant wins for pathology on the professional component of clinical pathology issue. Both CAP and the AMA submitted amicus briefs in favor of the pathologists.

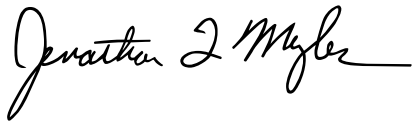
  A passage in the ruling gave particularly strong support for professional component billing for clinical pathology services reading "The evidence is overwhelming that patients and not just the hospitals benefit from the pathologists' quality control services billed under the PC-CP which insure the accuracy and reliability of the laboratory result needed for their diagnosis and treatment. . . It is not unfair that patients pay for pathologists' quality control services in assuring that the pathology lab established by the hospital is run properly." Neighborhood Clinics had contracts with numerous HMOs and health plans, such as Blue Cross Blue Shield, Humana, and others.

- In the leading federal case on the topic, Central States v. Pathology Laboratories of Arkansas, the court rejected the insurer's argument that pathologists "do not render medical services to Hospital patients." To the contrary, the court of appeals found that "Pathology Laboratories provides supervisory services of value to all patients. . ." The court also underscored pathologists being present or on call 24 hours and intervening to ensure a test is done right, recheck a surprising result or interpret ambiguous data in support of its ruling in their favor on payment for their PC of CP services.

In closing, we reiterate our urging Aetna to reverse its policy of discontinuing payment for PC of CP services. This policy is not supported by CMS practices, and is

disadvantageous to our patients, your beneficiaries. Elizabeth Fassbender, JD, Assistant Director, Economic and Regulatory Affairs will contact you to arrange discussions between your medical leadership and that of the CAP. She can be reached at efassbe@cap.org or 202-354-7125.

Sincerely,



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