



## COLLEGE of AMERICAN PATHOLOGISTS

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August 6, 2020

via email: [ra-in-commissioner@pa.gov](mailto:ra-in-commissioner@pa.gov)

Hon. Jessica Altman  
Office of the Commissioner, Insurance Department,  
1326 Strawberry Square,  
Harrisburg, PA 17120, [ra-in-commissioner@pa.gov](mailto:ra-in-commissioner@pa.gov).

*Re: Concerns Regarding Notice 2020-19*

Dear Insurance Commissioner Altman:

We are writing to express our concern regarding June 27, 2020 "Notice Regarding Coronavirus (COVID-19) Surprise Bills; Notice 2020-19." In this notice the Department of Insurance states: "the Department is aware that some laboratories or other testing services are charging amounts that are well in excess of their costs. Even if the charges are publicly posted, the amount may be considered improper price gouging."

The College of American Pathologists (CAP) shares the concern of your Department and opposes price gouging on testing, including COVID19 testing, should this testing be priced at an egregiously inflated level. As you know, section 3202(a)(2) of the federal "Coronavirus Aid, Relief and Economic Security Act" CARES Act provides as follows with respect to pricing of out-of-network SARS-CoV-2 testing:

"If the health plan or issuer does not have a negotiated rate with such provider, such plan or issuer shall reimburse the provider in an amount that equals the cash price for such service as listed by the provider on a public internet website, or such plan or issuer may negotiate a rate with such provider for less than such cash price."

The market value pricing for COVID19 testing is highly variable and dependent upon multiple input costs. When comparing private prices to Medicare payment rates it is important to note that these costs are not addressed in Medicare pricing. These payment rates were set without access to costs and charges for the test, and the Medicare Administrative Contractors (MACs) have not provided any methodology used to establish their rates.

Accordingly, with respect to the variability in out-of-network test pricing in claims to health insurance payers, it should be recognized that cost structures for COVID19 testing, across the nation, are highly dynamic, fluctuating, and are not fixed given the sudden shifts in preferred and optimal technologies and ancillary shortages in necessary supplies to conduct these tests. Quite simply, substantial variability in pricing should be expected in the current environment. This pricing variability has been documented by national surveys<sup>1</sup> which show a conventional range of market-based charges. Presumably, charges falling into the national range would not be considered "price gouging."

However, given the lack of clarity in the Department's notice of June 27th regarding "improper price gouging" we are hoping to ascertain clarification from your Department so that clinical laboratories

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<sup>1</sup> "COVID-19 Test Prices and Payment Policy" Nisha Kurani, Karen Pollitz, Dustin Cotliar, Nicolas Shanosky, and Cynthia Cox. < <https://www.healthsystemtracker.org/brief/covid-19-test-prices-and-payment-policy/> >



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billing for COVID19 testing in the conventional range of market based charges are able to avail the stated payment methodology of federal law. Thus, any clarification that would be forthcoming from your Department on this matter would both assist and inform our members regarding their obligations for compliance. Thank you for your courtesies and consideration of this request.

Sincerely,

David Gang, MD, FCAP  
Chair, Federal and State Affairs Committee

cc: Nirag Jhala, MD, FCAP, President, Pennsylvania Association of Pathologists  
Nick Kratz, Capital Associates