COLLEGE of AMERICAN PATHOLOGISTS

July 10, 2020

W. Scott Lewis, MPA, PMP
Sr. Program Manager, Healthcare Program Development and Management
Blue Cross NC

Sent via email

Dear Mr. Lewis:

The College of American Pathologists (CAP) appreciates the opportunity to comment on the Blue Cross Blue Shield North Carolina (Blue Cross NC) Professional Pathology Billing Guidelines AHS – R2169. 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.

It is our understanding that this updated policy is meant to inhibit the practice of "pass-through" or client billing, and as you know, we strongly support addressing this issue. However, we continue to have concerns regarding the conflicts between the Blue Cross NC proposed guidelines and guidelines required by Medicare. Further, we are increasingly concerned that the Blue Cross NC proposed guidelines may hinder the ability for community and independent laboratories to provide essential diagnostic services to patients. We also believe that laboratory accreditation is vital but does not need to be limited exclusively to the CAP – rather, we urge Blue Cross NC to use language requiring accreditation by "a CMS-deemed accreditor recognized under the specialty of pathology."

The CAP supports efforts to stop the practice known as "pass-through" or client billing, which occurs when a treating physician realizes a profit by charging a patient full price for a laboratory service that the physician purchased at a discount to the full price. The physician may even mark up the price of the service to widen the profit margin. Client billing can also encourage providers to overlook quality, while creating an economic incentive to order more tests than necessary, as each service ordered results in an incremental increase in profit. Instead, the CAP believes payment for anatomic pathology services should be made only to the person or entity performing or responsibly supervising the service, except for referrals between laboratories independent of a physician's office. This is consistent with American Medical Association (AMA) ethics principles[1] and has been a Medicare requirement since 1984. Thus, in the absence of a state direct billing requirement or anti-markup law, we agree with Blue Cross NC that client billing should be addressed by insurers. However, the mechanism used here is problematic in its inconsistency with current Medicare guidelines and given the issues that arise as a result.

As you know, Medicare's place of service (POS) codes are determined by the actual place where the patient/provider (face-to-face) interaction takes place. For example, when an independent laboratory accepts specimens from physician offices, Medicare directs these labs to file such claims with the POS 11. Further, many commercial insurers – including UnitedHealthcare – also follow Medicare POS guidelines. We

[1] https://policysearch.ama-assn.org/policyfinder/detail/fees%20for%20medical%20services?uri=%2FAMADoc%2FEthics.xml-E-11.3.1.xml

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understand that, as was expressed on the July 9th call, Blue Cross NC is not obligated to comply with Medicare guidelines. However, this conflict (where AHS – R2169 service guidelines require that "Patient specimens that originate from a physician office or an ambulatory surgery center, and where the pathology practice performs the TC, must be billed as POS 81") creates a number of billing issues for independent laboratories, including fraud concerns, issues with state health plan contracts and secondary insurance coverage, and resulting financial difficulty. The secondary insurance complications are especially concerning as there will be a conflict in any instance where Blue Cross NC is billed – either as primary or secondary coverage – together with a Medicare or a Medicare-following commercial plan. Pathology practices and independent laboratories should not have to forgo payment for services rendered because of denials that arise solely out of conflicting billing guidelines.

We understand Blue Cross NC's interest in providing appropriate cost options for its membership, and now more than ever we must ensure patients receive the testing and treatment they need. However, guidelines that place undue stress on or that affect the financial viability of pathology practices and independent laboratories will only limit the ability of pathologists to provide care for patients. Currently, pathology practices and independent laboratories are facing serious stress across the nation as they remain on the frontline of the current COVID-19 crisis. In addition to ensuring prompt and accurate testing for patients and providers, pathologists in hospitals and independent laboratories have been responsible for developing and/or selecting new test methodologies, validating and approving testing for patient use, and expanding the testing capabilities of the communities they serve to meet emergent needs. Meanwhile, because of the current crisis, pathologists have faced a shift in health care priorities that results in increased unreimbursed expenses and a disruption of less-urgent surgeries and other procedures. Thus, the COVID-19 national emergency not only highlights the importance of ensuring access to the usual care and needed pathology and laboratory services – including those of hospital-based pathologists, independent laboratories, and others – it casts a bright light on the full range of services pathologists provide in patient care.

We have also heard from members in North Carolina that the requirement that "Specimens originating from a physician office, must be transported to a reference lab contracting with Avalon, and be billed by such contracting lab as POS 81" is problematic because of difficulty getting accepted into the Avalon network. We were pleased to hear on the July 9th call that Avalon wants to address this and ensure a "broad network," and we would encourage Blue Cross NC to confirm this happens. Further, we were pleased to hear that Avalon fee schedules are negotiable as it is vital for pathology practices and independent laboratories to be able to work together with their payers and consider the unique positioning/services of the practice or laboratory.

In addition, we share some of the confusion expressed on the July 9th call regarding the "Practice Type Definitions" on page 4 of the proposed policy, and in particular, the characterization of independent laboratory. If a laboratory provides only anatomic pathology services, would they be characterized as an independent lab?

Finally, while we support Blue Cross NC's effort to ensure all pathology laboratories are CLIA certified and appropriately accredited, we believe accreditation does not need to be limited to the CAP. Rather, we urge Blue Cross NC to change the CAP-specific wording to language requiring accreditation by "a CMS-deemed accreditor recognized under the specialty of pathology."

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As we had suggested earlier, we urge Blue Cross NC to explore another approach to address client billing that does not pose the billing guideline conflict and attendant liability of the currently proposed mechanism. For example, we maintain that use of CLIA certification to ensure appropriate direct billing for pathology services would more directly address the cost and quality concerns without the guideline conflict that is currently proposed. The CAP would be happy to continue discussions about how to better address client billing.

Thank you again for the opportunity to comment on this proposed policy. The CAP welcomes the opportunity to work with Blue Cross NC to address these important issues that affect the medical care of beneficiaries. Please direct questions to Elizabeth Fassbender, JD, at (202) 354-7125 / efassbe@cap.org.

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