



Pennsylvania Association  
of Pathologists

Representation. Advocacy. Connection. Education.

777 East Park Drive  
P.O. Box 8820  
Harrisburg, PA 17105-8820  
717-558-7750 Ext. 1594  
FAX 717-558-7841

*President*

Nirag C. Jhala, MD

*Secretary/Treasurer*

Martha R. Clarke, MD

*Executive Director*

Barbara J. Husic

November 13, 2019

Hon. Tina Pickett  
Chair, House Insurance Committee  
315-A Main Capitol Building  
PO Box 202110  
Harrisburg, PA 17120-2110

Hon. Anthony M. DeLuca  
Democratic Chair, House Insurance Committee  
115 Irvis Office Building  
PO Box 202032  
Harrisburg, PA 17120-2032

Dear Rep. Pickett and Rep. DeLuca:

On behalf of the Pennsylvania Association of Pathologists (PAP) and our over 340 members, I am writing to express our strong opposition to House Bill 1862, 2795 as currently introduced addressing the issue of out-of-network billing. PAP supports the intent of the legislation to end the practice of out-of-network billing and ensure that patients have no financial responsibility beyond their in-network cost-sharing obligation. However, we believe that the methodology in the legislation to end out-of-network billing will devastate our ability to provide pathology service care to all Pennsylvanians, create instability in existing insurance-provider contracts, and increase pressure on already stressed rural hospitals. Fundamentally, the legislation makes no recognition of the fact that often pathologists (specialist physicians) who have no control over patient insurance information often receives specimen from various sources including emergency services or emergent surgeries. Pathology services in such scenarios will continue to review parts of specimen or laboratory work up regardless of insurance status. This results in a series of foreseeable, unintended adverse consequences.

1. Defining the 'commercially reasonable' reimbursement standard for out-of-network care as the median in-network rate – As we have previously conveyed, any statutory rate for out-of-network care will by default be a state-mandated price control on all future negotiations between emergency physicians and insurers. Given the federally mandated obligations for pathologists to report on samples they receive from these providers regardless of insurance status, insurers will default to this rate in all future contract negotiations with in-network pathologists knowing that under this legislation, their actuarial responsibilities are capped and their subscribers will continue to be provided quality care by pathologists. By definition of a median rate, half of currently in-network pathology and laboratory services will see their reimbursement fall at the next contract negotiation because insurers will have no incentive to negotiate with these physicians knowing the structure of this bill.

In addition, insurers will be incentivized to simply cut currently in-network specialist pathologists from insurer contracts to reduce the median-in network rate, again knowing that under federal law, these specialist physicians (pathologists) and laboratories they oversee will continue to see their insureds and our patients under all circumstances. This will cause further downward pressure on all in-network emergency physician reimbursement. Both of these consequences have been seen in other states that have set a statutory benchmark rate as HB 1862 does.

Finally, these downward pressures will have spillover effects on hospitals, especially rural hospitals, already stressed in Pennsylvania. With the decline in reimbursement from commercial insurance, pathologists including those in the academic and non-academic center laboratories will be challenged to have the resources necessary to staff and therefore ensure access and provide care to all Pennsylvanians.

PAP would support the defining of 'commercially reasonable' as 'all reasonably necessary costs,' or the substituting of 'commercially reasonable' with 'all reasonably necessary costs,' or leaving the term 'commercially reasonable' undefined if these options are combined with an appropriate independent dispute resolution mechanism.

2. The use of arbitration as a method to verify the accuracy of payment – HB 1862 calls for the use of arbitration to verify the accuracy of payment from insurer to out-of-network pathology services provided by pathologists / specialist physicians. Fundamentally, this misconstrues why an independent dispute resolution mechanism is needed. As we have previously expressed, given that by definition an out-of-network episode of care involves an interaction between an insurer and pathologists and laboratory services without a contracted relationship, there is a need for a final mechanism to evaluate the appropriateness, not the accuracy, of payment and resolve disputes. In addition, the legislation makes no consideration of who would pay the cost of arbitration. Accessing the arbitration mechanism to verify the accuracy of an opaque, proprietary, and insurer-alone determined rate from above is cost prohibitive for pathologists and laboratories they oversee and would again jeopardize access to patient care. We are not aware of any state that has used the arbitration approach used in HB 1862.

PAP would support the use of an independent dispute resolution mechanism structured like that which has existed in New York State for five years and now emulated in a number of other states. This structure calls for an expedited, best-and-final offer, loser pays mechanism with strict criteria after an attempt at mutual accommodation. These criteria should include 1) any prior contracted rate between the parties adjusted for the time since that contractual relationship was ended by either side, 2) the qualifications of the pathologists (specialist physician), 3) the circumstances under which the care was provided, and 4) the pathologist requested and insurer-offered level of payment respectively in comparison for the same service in the same location by the same specialty to previous cases by the involved parties. This incentivizes both sides to remain in-network and, if one party ends a contracted relationship, to come to a reasonable agreement and only use the independent dispute resolution as a last resort. As borne out in New York State, the two-step process of a reasonable payment standard followed by mutual accommodation and a well-structured independent dispute resolution will increase the incentive to remain in-network for both insurers and pathologists, resolve disputes amicably, and only rarely access the independent dispute resolution mechanism.

PAP supports a resolution of the issue of out-of-network billing that protects patients and ensures that existing and future in-network relationships between emergency physicians and insurers are maintained on an equitable basis. We stand ready to work with you, your staff, and all stakeholders to continue to ensure that all Pennsylvanians receive the quality emergency care they deserve.

Sincerely,

A handwritten signature in black ink, appearing to read "Jhala", with a horizontal line underneath the name.

Nirag C. Jhala, MD  
President, Pennsylvania Association of Pathologists

cc: Members, House Insurance Committee  
Speaker Turzai  
Majority Leader Cutler  
Majority Whip Benninghoff  
Majority Caucus Chair Toepel  
Democratic Leader Dermody  
Democratic Whip Harris  
Democratic Caucus Chair McClinton  
Garth Shipman, House Insurance Committee  
Alan Cohn, House Insurance Committee