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Memorandum |

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National Conference of Insurance Legislators (NCOIL)

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From: Barry Ziman
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Subject: Objection to Pathologist Estimates of Charges Prior to Service

Objection to Pathologist Estimate of Charges Prior to Service

Background on Pathology Practice

The inherent nature of pathology work makes it impossible to provide patients with a meaningful estimate of charges in advance of the service. In the case of anatomic pathology, involving the diagnosis of tissue specimens (i.e. Biopsies), a pathologist cannot predict the type or number of specimens or anticipate what separate studies may be necessary. A surgical or invasive diagnostic procedure performed by a dermatologist, surgeon, gastroenterologist, urologist or other clinician, may result in no specimens obtained, or it may result in a single specimen or multiple specimens requiring anatomic pathology evaluation. Anatomic pathology services typically involve a pathologist performing microscopic analysis of tissue or body fluids to determine whether cancer or other disease is present and, if so, its characteristics. **The type of specimen or complexity of the analysis is often not known in advance of the initial microscopic analysis conducted by the pathologist, making it impossible to provide a reliable estimate of charges or costs.**

In some cases, it is only during the course of the procedure that the need for pathological analysis may be evident. Furthermore, the call for pathologist involvement may be urgent and immediate, for example, providing information or guidance to the surgeon while the patient is under anesthesia.

The performance of the anatomic pathology service can be highly variable in both cost and diagnostic assays used, depending upon the clinical scenario as well as characteristics of the specimen. The evaluation of some specimens may require additional complex studies, including the use of special stains or genetic analysis, all with the potential for significant cost. Special stains are used to help define and differentiate a diagnosis of the specimen. Genetic analysis will yield additional, critical information, potentially confirming a genetic alteration associated with a malignancy or providing crucial information about the selection or effectiveness of a particular therapy.

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The need for these additional procedures will likely not be known prior to the specimen being obtained and examined. This additional testing or specimen preparation may be performed at the laboratory receiving the specimen or require referral to specialized referenced laboratories, generating additional costs that could not have been contemplated or anticipated under the initial estimate of charges. The cost of these additional diagnostics assays can be significant and unforeseen prior to the initial examination of the specimen. **We are highly concerned that requirements for written estimates may impede or disrupt current standard of care practices that allow for referral of patients specimens between laboratories without administrative encumbrances.**

Of additional concern, in many cases, the anatomic pathology examination of the patient's specimen is not a scheduled procedure. Current language of the bill contemplates "delay in the scheduling and provision of services." Such a delay is not consistent with the medical standard of care in pathology and would likely be contrary to federal law governing laboratory services. Pathologists cannot defer anatomic pathology procedures based on financial considerations, as this would potentially result in specimen degradation or delay in surgical action, especially while the patient is in surgery, thereby jeopardizing care, and/or the accuracy of a diagnosis.

This unpredictability is not limited to anatomic pathology. An abnormal finding from a clinical laboratory evaluation of a patient in many cases will establish the need for additional testing. Abnormal findings that are discovered on an initial clinical laboratory work-up in hospital or facility inpatients, or complications that develop during admission, by necessity, require additional clinical laboratory testing to determine the cause of the abnormality or complication. Requirements for written estimates at each stage of the patient's medical work-up could very well encumber the efficient and prompt delivery of medical care. For example, a patient may be admitted for a liver resection for which the anatomic pathology service may be expected, but the patient's medical status may require necessary clinical pathology work, including blood transfusions, coagulation studies, complete blood cell counts, and chemistries, etc.

The premise of a written estimate for both anatomic and clinical pathology is that diagnosis and patient care is an unvarying and predictable exercise-- that premise is faulty and may result in presenting patients with expectations that are not medically realistic. For those patients with unexpected abnormal laboratory findings, or who have complications, deviation from the written estimate can only serve to exacerbate the apprehension of the patient. Accordingly, these estimates complicate standard medical care and can be to the detriment of medical practice.

Enumeration of Objections

In general, pathologists understand why a written estimate may be useful, from a public perspective, for out-of-network patients; however, the paramount concern of the pathologist is that administrative requirements not interfere with, or impair, the patient's medical diagnosis and care. Accordingly, the following considerations are a basis for concern and objection to any requirement for provision of a written estimate of services in advance of the service:

- 1) Given the unpredictability of the need for, or extent of pathological examinations, written estimates for pathology services, prior to surgery or a diagnostic procedure, are inherently flawed and may be substantially misleading. Such estimates may deter patients from seeking care when the estimates may be much greater than the actual service charge.

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- 2) When a diagnostic or surgical procedure is undertaken, the type or number of specimens that will be taken is, in many cases, not definitively known in advance and any estimate of cost will be highly unreliable and not informative for the patient.
- 3) The provision of mandated estimates for medical procedures should not exert an influence or limitation on medical decision-making in the course of an anatomic pathology diagnosis, including the potential to deter unanticipated but potentially costly assays, or the use of outside reference laboratories to perform additional analysis on a specimen when such costs had not been factored into estimates provided the patient in advance.
- 4) Written estimates may mislead the patient's medical expectations and be especially concerning for those patients who present abnormal clinical laboratory results that necessitate additional clinical laboratory studies.
- 5) In many cases, pathological services are unexpectedly needed during a surgical or diagnostic procedure, thus the pathologist may not have been requested to provide a written estimate, thus nullifying any merit to the estimate.
- 6) The preparation of a written estimate will require the exercise of medical judgment and given the time constraints on physicians, the use of this valued medical judgment should not be diverted from the delivery of quality medical care, and devoted to hypothetical financial exercises regarding what costs may be incurred in the highly unpredictable course of patient evaluation and treatment.