Proskauer

A Test Costs What? Pricing and Reimbursing COVID-19 Tests

Minding Your Business Blog on **November 20, 2020**

Out-of-network providers appear to be inflating the price of COVID-19 diagnostic and antibody tests, according to a recent America's Health Insurance Plans (AHIP) survey. The October 2020 survey reports that out-of-network providers, as a whole, were charging higher prices for nearly half of the COVID-19 diagnostic tests and a third of antibody and antigen tests—a 10% increase since July. As the AHIP reports, nearly half of all out-of-network diagnostic testing exceeded $185, with between 9% and 16% of out-of-network test claims charging "more than $390 (three times the average cost).") The amount of COVID-19 tests administered out of network has also increased since July, by 14%.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted on March 27, 2020, provides that insurance plans must "provide coverage, and shall not impose any cost-sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements," on COVID-19 testing. The Act requires test providers to publicize the "cash price" for COVID-19 diagnostic tests – though it does not set pricing benchmarks for reasonable pricing. (In practice, major commercial labs have reported posted prices that range from $95-$209 for diagnostic tests.) Should providers not comply with the requirement to publicize the "cash price," the Secretary of Health and Human Services is authorized to impose a civil fine of up to $300 per day that the information is unpublicized.

Unless insurers have negotiated their own reimbursement rates with providers, the CARES Act requires health plans to reimburse up to that "cash price," "as listed by the provider on a public internet website." From the providers' point of view, as AHIP notes, the requirement that providers reimburse the cash price "eliminates their ability to negotiate more affordable test prices."

From the consumers' perspective, the CARES Act does not set forth billing procedures, and, in particular, does not prohibit out-of-network providers from billing patients directly for the COVID-19 test. This can lead to confusion for consumers, who may be eligible for reimbursement from their health plan under the CARES Act, but may not be aware of their eligibility. Some states have stepped in to interrupt this practice. In Washington, for example, the insurance commissioner issued an emergency order that bans labs for billing insureds.

Policymakers may take action to constrain prices, or perhaps an increase in testing availability and options will help lower costs. In the meantime, in addition to the federal protections under the CARES Act, states can also take action on perceived price gouging related to COVID-19 diagnostic tests.

Some state price gouging laws clearly apply to COVID-19 testing. For example, Virginia's statute explicitly applies to "medical supplies and services." Even more directly, the Florida Attorney General issued a statement on the commodities covered under the state of emergency that includes "COVID-19 test kits, swabs, and related consumable medical supplies used in administering tests." (Indeed, the state initiated a price gouging investigation of a Florida hospital for high-priced COVID-19 tests, though the hospital was eventually cleared of wrongdoing.).

While the form of their response varies, high testing prices are triggering state action. Politico has reported that several states have taken steps to either cap costs or provide more guidance as to what insurance should pay for COVID-19 testing; at the same time some insurers, who are supposed to cover these tests but are balking at high prices, "have tried to get out of paying lab claims even for those patients showing symptoms." We expect states to continue to take an interest in this area, and to take additional steps and pursue investigations as appropriate.

* * *

Visit Proskauer on Price Gouging for antitrust insights on COVID-19.

* * *

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our Coronavirus Resource Center for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

View Original

Related Professionals

- **Christopher E. Ondeck**
  Partner
- **John R. Ingrassia**
  Partner
- **Kelly Landers Hawthorne**
  Associate