Twenty-First Century Pathologists' Advocacy

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• Pathologists' advocacy plays a central role in the establishment of continuously improving patient care quality and patient safety, and in the maintenance and progress of pathology as a profession. Pathology advocacy's primary goal is the betterment of patient safety and quality medical care; however, payment is a necessary and appropriate component to both, and has a central role in advocacy. Now is the time to become involved in pathology advocacy; the Medicare Access and Children's Health Insurance Program (CHIP) Reauthorization Act of 2015 (MACRA) and the Protecting Access to Medicare Act of 2014 (PAMA) are 2 of the most consequential pieces of legislation impacting the pathology and laboratory industry in the last 20 years. Another current issue of far-reaching impact for pathologists is balance billing, and yet many pathologists have little or no understanding of balance billing. Pathologists at all stages of their careers, and in every professional setting, need to participate. Academic pathologists have a special obligation to, if not become directly involved in advocacy, at least have a broad and current understanding of those issues, as well as the need and responsibility of pathologists to actively engage in advocacy efforts to address them, in order to teach residents the place of advocacy, and its value, as an inseparable and indispensable component of their professional responsibilities.

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ADVOCACY AND THE COLLEGE OF AMERICAN PATHOLOGISTS

Pathologists' advocacy plays a central role in the establishment of continuously improving patient care quality and patient safety, and in the maintenance and progress of pathology as a profession. The College of American Pathologists (CAP) has long been a leader in advocacy. The CAP Board of Governors provides for pathologists' advocacy efforts through its Council on Government and Professional Affairs, which develops the CAP's advocacy agenda, and advocacy efforts originate predominantly from the CAP's great advocacy team in its Washington, DC, office.[1] The CAP's Washington, DC, team is the nation's leading advocacy voice for pathologists on Capitol Hill, and it also assists state societies, upon invitation, with complex or significant state legislation that threatens our patients and our profession. Each year, the CAP has a Policy Meeting in Washington, DC, attended by practicing pathologists and pathology residents from across the nation, where ongoing legislative concerns are discussed in detail, and, very importantly, pathologists visit face-to-face with their legislators and legislators' staff to educate them about legislation currently being considered on Capitol Hill. This annual event is valuable for advocacy novices and veterans alike in developing and maintaining an understanding of the breadth of advocacy, its complexities, and pathologists' most complex current issues.[2] CAP's STATLINE, delivered weekly to members via email, also provides valuable timely education to CAP members and others regarding the legislative and regulatory issues facing pathologists.[3]

Pathology advocacy's primary goal is the betterment of patient safety and quality medical care; however, payment is a necessary and appropriate component to both, and has a central role in advocacy.[4] Pathologist payment must play a critical role in pathologists' advocating for our patients and our profession; indeed, "it is an ethical obligation of current pathologists to ensure the continuation not just of pathology, but of excellence in pathology. The understanding of medicine necessary for pathologists to provide patient care requires many long, hard years of training. Pathologists need to be paid reasonably given all of these considerations."[5]

WORDS ARE IMPORTANT

When advocating for change, words are important.[6] A term frequently used today to describe payment for the services physicians provide their patients is the somewhat vague term *physician reimbursement*,[7] or the even more nebulous *provider reimbursement*.[8] The definition of "reimburse" is "to pay back to someone" as in to reimburse for travel expenses.[9] While not inaccurate in describing physician payment for the services they provide their patients, "reimburse" carries with it the connotation of optionality, as if payment is not compulsory. It also has a way of separating the act for which reimbursement is being made—the pathologist's work—from the reimbursement. *Pay* is a much more direct term. The definition of "pay" is "to make due return to for services rendered or property

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delivered," or "to discharge a debt or obligation," [10] which carries the strong connotation of responsibility or compulsion. As such, *physician payment*[11] is a preferable term and its use should be encouraged.

WHY GET INVOLVED IN PATHOLOGY ADVOCACY NOW?

The establishment of a new federal Executive administration will likely provide opportunities for pathology advocacy in the future; however, there are a few extremely important pathology advocacy issues today of which all pathologists should be aware, and prepared to act on, in the current tumultuous medical environment. The Medicare Access and Children's Health Insurance Program (CHIP) Reauthorization Act of 2015 (MACRA) and the Protecting Access to Medicare Act of 2014 (PAMA) are 2 of the most consequential pieces of legislation impacting the pathology and laboratory industry in the last 20 years. Collectively, during the next 5 years, these 2 laws promise to drive the complete reengineering of the Medicare payment systems for physicians and laboratories. The Annual Physician Payment Schedule, and regulatory changes surrounding laboratory-developed tests, are also critical and complex issues that involve essentially every pathologist in the nation. All of these issues, and others, demand the advocacy of pathologists. There has never been a better, and more necessary, time for pathologists to advocate for our patients and our profession; most physicians are not ready to take on MACRA's level of risk, and "…'the average doctor on the street can barely tell you what MACRA is'…about half of nonpediatric physicians had never even heard of MACRA, much less understood its implications." [12] And PAMA has penalties "…up to $10,000 per day that an applicable lab fails to report applicable information or misrepresents applicable information that is reported. In response to stakeholder concerns over the severity of these civil monetary penalties (CMPs)—particularly by small labs that contend that they would be forced to close if such a penalty were applied—CMS clarified that $10,000 is a maximum, not a minimum…" [13]

Another current issue of far-reaching impact for pathologists is balance billing, and as balance billing is an issue for which statehouse advocacy (as opposed to advocacy on Capitol Hill) is singularly suited, it is balance billing on which detailed attention will be paid here.

BALANCE BILLING

The cover story for the June 2016 *CAP Today* was titled "Clampdowns on Out-of-Network Billing Climb," [14] and yet many pathologists have little or no understanding of balance billing. This is dangerous.

Balance billing has the potential to affect all doctors; however, some subspecialties, such as pathology, are already being strongly influenced by it. Balance billing occurs when a physician or physician group bills a patient for the difference between the physician's charge and the amount, if any, paid by the patient's insurance company. For example, if the physician charges $150 and the insurance company only pays $100, the patient may receive a bill for the remaining $50. Physicians who are contractually recognized by the insurance company as "in-network physicians" or "preferred providers," typically submit a bill to, and are paid by, the insurance company only.[15–18] Doctors who are "out-of-network physicians," and are not "preferred providers," may be paid a part of, or none of, bills submitted to an insurance company for taking care of one of the insurance company's insured patients. Because of the complexity of provider agreements and the dynamic nature of insurance company's "preferred provider" lists, patients often do not know whether the health care they are seeking or are receiving includes health care performed by out-of-network physicians. Pathologists are one of the subspecialty physician groups who often find themselves taking care of their patients as out-of-network physicians. Other subspecialty physician groups who may be out of network include assistant surgeons, emergency physicians, and anesthesiologists, among others. Frequently, pathologists and pathology groups do not intentionally choose to be out of network, but they often find it impossible to get into a network, even when asking the insurance company repeatedly to be included.

It is easy to see how a patient, receiving a bill for the pathologist's diagnosis, might be confused and resentful of the bill; the risk is quite high given many patients do not know the pathologist took care of the patient and made a diagnosis or for that matter that the pathologist even exists. As the legislative battles have progressed, the narrative surrounding balance billing has for some time been one, shaped by the insurance companies, of "patient protection." [19,20] This narrative paints doctors as "greedy and immoral" for billing for their services to their patients[21]; clearly, patients must be "protected" from such behavior by doctors. Even Andy Slavitt, head of the United States Centers for Medicare and Medicaid Services, said "[e]verybody in the chain is culpable." [22] Insurance companies have owned the public relations surrounding balance billing—doctors are gouging patients.

Out-of-network billing policy changes have been considered by state legislatures for many years, but recent coordinated communication efforts by health plans, consumer groups, and business associations have put pathologists and other physicians in a defensive posture. It was in this environment that the state of Florida recently passed a law holding that a patient is "…only responsible for paying their usual in-network cost-sharing." [23,24] While not a "worst case scenario" for Florida pathologists,[24] the law was nonetheless considered a "major victory" by insurance companies.[23]

Slowly, though, physicians are changing the narrative to reflect reality—that many insurance company networks are simply too narrow.[25] "'On paper when a consumer is looking at different plans, it sounds like a good deal,' says Robert Rodak, DO, president of the Pennsylvania Academy of Family Physicians. 'Insurance plans using narrow networks are often priced lower to make them more attractive to consumers, who often shop based upon the premium price.' But, Dr. Rodak wonders if consumers really understand that there's a trade-off. 'In exchange for that lower cost, consumers accept fewer access options.'…'Keep in mind that your doctor may not practice at the hospital that is listed under your insurance plan and vice versa.'" [26]

In the 2015 legislative session, Texas lawmakers considered several efforts to reform and even prohibit the charging of out-of-network (balance billing) payments, but fortunately the Texas Society of Pathologists (TSP), working with other physician organizations, successfully defended against many proposed negative changes. Ultimately, the only legislative change adopted was one reducing the existing threshold for mediation on an out-of-network payment

from $1000 in billed charges to $500; and the listed physician specialties to which this applied was also expanded to include assistant surgeons. The balance billing issue returned as a key agenda item for the 2017 Texas Legislature, as it is in many other states as well. The TSP's message during its 2017 Legislative Session must be quantitative. The aim is to achieve a solution that (1) provides fair, market-based compensation for pathology services rendered without a preexisting agreement between pathologist and payer; (2) prevents unilateral determination of final reimbursement by payer for pathology services; and (3) provides for fair and timely arbitration of disputes that may arise between pathologist and payer.

To date there have been no consolidated options or solutions around which physician groups could coalesce. This gives our opponents an advantage, and continues to risk putting physicians at odds with patients, the media, and policymakers. The 2 most discussed "solutions" are (1) increased transparency in charges and billed amounts, giving consumers the information necessary to make their own health care decisions about who is providing the care; and (2) the development of an alternative payment process based on claims data from a reliable source, modeled in some ways on the recent changes in New York law.

For pathologists, as stated by Kevin Homer, MD, immediate past president of the TSP (oral communication, November 15, 2016), "[b]alance billing goes to the core of our profession. Pressure to increase profits causes payers to unilaterally ratchet down payments and prevent pathologists from joining networks. Balance billing is the only tool pathologists have to leverage insurers for payment, but it puts the patient in the middle of the dispute, making it impossible for even the most diligent patient to completely avoid."

THERE'S A LOT AT STAKE

Advocacy is not some abstract concept that can be left to others. It is the professional obligation of every pathologist to be involved in some level of advocacy. It is not hard to get involved; being a member of one's state pathology society and the CAP, and donating to one's state society legal fund and PathPac are a reasonable minimum involvement for even the most politically averse pathologist. Once a pathologist begins to pay attention to advocacy issues, that pathologist often finds 1 or more issues for which a specific expertise or understanding applies, and gets more deeply involved in advocating on that issue. In addition to the expansion of payment policy issues and other issues mentioned already, pathology and laboratory medicine is experiencing a similar expansion in the number of issues, much of it driven by the spread of molecular diagnostics, such as local coverage determinations, next-generation sequencing, the President's Personalized Health Care Agenda, and most recently, the Cancer Moonshot. Given the volume and complexity of the challenges we face as a profession, the CAP and state pathology societies will be redoubling efforts to keep their members informed of critical developments, as well as redoubling efforts to build membership and promote grassroots advocacy. Pathologists at all stages of their careers, and in every professional setting, need to participate.

Academic pathologists have a special obligation to, if not become directly involved in advocacy, at least have a broad and current understanding of those issues, as well as the need and responsibility of pathologists to actively engage in advocacy efforts to address them. Academic pathologists are directly involved not only in the development of residents' understanding of disease and diagnosis, but also in the development of residents' professional lives. It is critically important that residents learn the place of advocacy, and its value, as an inseparable and indispensable component of their professional responsibilities.

To stay uninvolved, or leave it to others, and hope for a bright future for our patients and our profession is unrealistic. And it perpetuates the risk of pathologists being seen as we are on GomerBlog's "Medical Specialties as Game of Thrones Characters"—"Pathology is…ah…" "Exactly, nobody knows who you are." [27]

CONCLUSIONS

"In thinking about the future of pathology, we have to stand back and ask what's going to change and how will we adapt to the change?" [28,29] Rather than fear change, pathologists can embrace change by being the quality leaders. Remember, we physicians "are the stewards of quality. [We] must aggressively develop an agenda for improvement." [28,30] Advocate like your patients and your profession depend on it. They do.

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