



## COLLEGE of AMERICAN PATHOLOGISTS

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April 16, 2018

The Honorable Philip Dunton Murphy  
Governor State of New Jersey  
PO Box 001  
Trenton, NJ 08625

Re: Request for Conditional Veto of Senate Bill 489/ Assembly Bill 2039

Dear Governor Murphy:

On behalf of the College of American Pathologists (CAP), and the New Jersey Society of Pathologists (NJSP), I am writing to urge your conditional veto of Senate Bill 489/ Assembly Bill 2039.

As you know, current New Jersey law and regulations require patients to be financially saved harmless by their health insurance payer for out-of-network (OON) service costs that exceed the patient's applicable deductibles, co-insurance and co-payments when they receive services at an in-network hospital. **This legislation constructively builds upon these protections in current law that we support.** However, the bill contains a provision that is clearly anti-patient and anti-consumer and designed to financially benefit the health insurance industry, and, accordingly, we request this provision be conditionally vetoed. **Specifically, the bill makes it an unlawful practice for physicians to waive charges for patients in economic distress.** This provision should not be enacted into law.

According to a recent national survey, approximately 22 percent of individuals who used OON (Out-of-Network) providers negotiated the terms of their OON bill with the insurer or provider and 58 percent were successful in reducing their costs for at least one of the bills.<sup>1</sup> For those patients seeking a change in the bill, **63 percent were successful in reducing their bill when conferring with the OON provider.** To construe any physician waiver of co-payments, co-insurance, or deductibles on any patient claim, regardless of the patient's economic status, as a potentially fraudulent activity by the physician is an irresponsible and harmful application of law to benevolent physicians and to patients.

Conversely, the legislation should expressly allow physicians to waive OON charges based upon patient economic necessity. Specifically, to benefit patients we urge adoption of language to provide: Any out-of-network provider who, on a case-by-case basis, determines to waive any cost for an enrollee in a health plan based upon economic circumstances of the enrollee, including any balance billed amount, co-payment, coinsurance or copayment, shall not be subject to: 1) any civil cause of action by a health plan; (2) subject to prosecution for any violation in any court of jurisdiction, or (3) any sanction before any state oversight board (4) any approval requirement of a health plan." **It**

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<sup>1</sup> "Patient's Success in Negotiating Out-of-Network Bills," The American Journal of Managed Care, Kelly A. Kyanko, MD, MHS, Susan H. Busch, PhD, Vol, 22, No 10, October 2016.



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**should be noted that New York State regulations (10 CRR-NY 34- 2.12 (c) expressly safe-harbor such fee-waiver practices for clinical laboratories and pathologists.**

We respectfully request a conditional veto of the bill to delete Section 15 (a) and (b) which prohibits physician waiving of charges for patients under economic duress.

Thank you for your courtesies and consideration.

Sincerely,

R. Bruce Williams, MD, FCAP  
President