



**Statement Submitted**

**By**

**The College of American Pathologists**

**Hearing to Examine Expiring Medicare Provider Payment  
Provisions**

**Subcommittee on Health**

**Committee on Ways and Means  
U.S. House of Representatives**

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**College of American Pathologists**

**Division of Advocacy**

**1350 I Street, NW, Suite 590**

**Washington, DC 20005**

**[www.cap.org](http://www.cap.org)**

## INTRODUCTION

The College of American Pathologists (CAP), representing 17,000 pathologists who practice clinical and/or anatomic pathology, appreciates the opportunity to submit comments to the House Ways and Means Subcommittee on Health regarding the extension of a “grandfather” provision for crucial physician pathology services under Medicare. The CAP is the world's largest association composed exclusively of board-certified pathologists and is the worldwide leader in laboratory quality assurance. CAP members practice their specialty in community hospitals, independent laboratories, academic medical centers and federal and state health facilities. More than 7,000 laboratories are accredited by the CAP, and approximately 23,000 laboratories are enrolled in the College's proficiency testing programs.

The CAP recognizes the difficult task of deficit reduction facing the Congress and the need to improve health care quality while curbing costs. Pathologists, with their expertise in diagnostic testing, are doing their part to deliver the most targeted and effective treatments for patients. Through their understanding of the basis of disease, they can help improve the quality, efficacy, accuracy and safety of health care delivery.

## POSITION ON TECHNICAL COMPONENT (TC) “GRANDFATHER” FOR PATHOLOGY SERVICES

**The CAP strongly supports a permanent extension of the “grandfather” provision contained in bipartisan legislation H.R. 2461, *the Physician Pathology Services Continuity Act of 2011*, introduced by Representatives Geoff Davis (R-KY) and Mike Ross (D-AR). This legislation allows independent laboratories, under certain conditions, to bill Medicare directly for the technical component (TC) of anatomic pathology services, commonly referred to as pathology services, provided to hospital patients. Unless Congress acts this year, the “grandfather” will expire, adversely impacting hospitals, independent laboratories and the patients they serve.**

## BACKGROUND

Since the beginning of the Medicare program, independent laboratories have been allowed to bill Medicare directly for both the TC and professional component (PC) of pathology services provided to hospital patients. Pathology services are physician services under Part B. They are essential to surgical services in a hospital. They include pathologist examination of tissues removed during surgery, such as tumors, inflammatory tissue and biopsies, to determine whether and what disease is present. The TC of pathology services includes specimen processing and special preparation of tissue samples. The PC for these services involves pathologist interpretation of the specimen and diagnosis.

Over the years many hospitals have chosen to have these pathology services provided by independent laboratories for a variety of reasons. Some hospitals lack the surgical

volume to support an in-house pathology practice. This is particularly true in rural communities and small hospitals. Others have chosen to send specimens out because the independent laboratory, by taking in referrals from multiple sites, can provide more sophisticated diagnostic techniques for a wider range of cases than a single hospital can afford for its patients. Finally, in these arrangements, independent laboratories are often able to provide the services more efficiently given the economies of scale they generate.

In 2000, CMS implemented a new rule that eliminated Part B payment for the TC of pathology services provided by independent laboratories. This meant that hospitals that had been relying for decades on independent laboratories to provide these services would incur new costs. Hospitals were not given additional funds to pay for these services.

That same year, Congress provided legislative relief in the form of a “grandfather” provision for hospitals that were using independent laboratories for pathology services as of July 22, 1999 -- the date the first proposed rule change was published. Since then, Congress has consistently extended the “grandfather” with strong bipartisan support; most recently as part of the *Medicare and Medicaid Extenders Act of 2010*. Without Congressional action, the “grandfather” provision is set to expire at the end of this year.

It's important to note that “grandfathered” hospitals may utilize any independent laboratory for their TC pathology services. This allows for competition among laboratories for delivery of care, and allows hospitals to choose the laboratory that best meets their needs. Because the “grandfather” applies to a set universe of hospitals, there can be no unlimited growth going forward. Moreover, if the “grandfathered” had only been using an independent laboratory for certain situations or at particular times, those restrictions continue to apply.

## **IMPACT**

The consequences of not extending the “grandfather” are severe. Hospitals, independent laboratories and patient care would suffer. Hospitals would not be able to absorb the additional costs for these TC pathology services. Yet, without these services, a hospital cannot offer surgical services to its patients. Approximately three-quarters of states in the country would be impacted. The burden would fall especially hard on smaller and rural hospitals. In fact, some hospitals may be unable to continue providing quality surgical services in local communities, requiring patients to travel far from their homes, families and their regular physicians in order to obtain needed procedures.

Many independent laboratories are small businesses. They face the same economic headwinds and cost pressures that other small businesses face. Without the “grandfather”, these laboratories may be forced to cut back on testing services as well as investments in new technologies that benefit patients. Economies of scale would be lost. Worse still, jobs may be lost. A laboratory practice that can't meet its costs cannot endure indefinitely. Furthermore, providing services below cost can trigger compliance concerns for both parties. Providing Medicare services below cost is generally considered inducement or a kickback under federal law.

Finally, without the “grandfather,” both hospitals and independent laboratories would have to establish new costly and administratively complex billing systems. Under direct billing, independent laboratories submit a single bill to Medicare for both TC and PC services. Without direct billing, laboratories would have to issue two bills – one to Medicare for the PC and another to the hospital for the TC, doubling billing requirements and costs. Hospitals would be required to set up systems to receive and account for these billings and TC costs and pay the laboratories once payment has been received from the hospitals' intermediaries – all at a time when providers are already struggling to keep pace with a myriad of Medicare regulations.

## **CONCLUSION**

Health care providers are already being asked to do more with less. The “grandfather” is a fair, reasonable and effective response to ensure stability and continued patient access to vital pathology services. The CAP urges timely continuation of the TC “grandfather” and passage of H.R. 2461.