

Healthcare Surprise Billing of Laboratory Tests

By Emily Madoff



Consumers often are surprised by receiving large bills for medical testing from a laboratory when they believe the testing should have been covered by their health insurance. This issue recently was addressed by a Nevada appeals court¹ that found the Patient Acknowledgement form provided by Laboratory Corporation of America Holdings (aka LabCorp) omits material information relating to the cost of certain tests.

LabCorp provides laboratory testing services to millions of healthcare recipients internationally. Prior to submitting to testing, patients present their insurance information to LabCorp, which then gives the patients a Patient Acknowledgment form that includes estimates of their financial responsibility for the prescribed tests. This cost information is provided notwithstanding that LabCorp had not yet determined whether a patient's health insurance will cover the requested testing; yet the Patient Acknowledgement form estimates assume all services will be covered by the patients' insurers. If the service is covered by the insurance, LabCorp bills the patient's insurance company the negotiated health plan rate. But, if the insurance company decides the service is not covered by the insurance, LabCorp bills the patient directly at its patient List Price, a price substantially higher than the amount paid by the insurance company for the negotiated rate. It is when a patient's insurer decides that a prescribed test is not covered that the consumer patient receives a large bill from LabCorp for the test in question.

¹ Nolan v. Lab'y Corp. of Am. Holdings, No. 23-1282, 2024 U.S. App. LEXIS 8627 (4th Cir. 2024).



Although the Patient Acknowledgement form advises the patient of the estimated health plan rate (born largely by the insurer), it does not inform the patient of the highly-elevated patient List Price that will be applicable if the testing is not covered by the insurance. So, if a patient's insurer denies coverage for certain lab testing services, LabCorp bills the patients directly, and bills them for a price much higher than the negotiated rate it charges the insurer (which is the cost disclosed on the Patient Acknowledgement form). Even though LabCorp knows its List Price may be charged to patients before conducting any lab testing, it fails to provide that information to the insured patients; and when the insured patients are charged personally, the cost is nearly 15 times higher than the disclosed negotiated rate.

In the matter decided by the Fourth Circuit Appeals Court, in 2018, Nathaniel J. Nolan visited LabCorp's location in Nevada. He was asked to sign a Patient Acknowledgment Form that listed each of the tests prescribed, the health plan rate for certain of those tests, an estimate of the amount that would be paid by Nolan's health plan and the patient's estimated out-of-pocket expenses taking into consideration the deductible, co-insurance, and co-pay amounts in Nolan's plan.

In the fine print, the Patient Acknowledgement form does state "your health plan may not pay for these services [,] and you will be personally responsible for these services." The form later states "This estimate assumes all services will be covered." However, nowhere does the Patient Acknowledgement disclose the List Price that patients will be charged if the patient's insurer denies the coverage, nor is the information provided prior to the patient consenting to financial responsibility. In fact, in Nolan's case, LabCorp's representative assured him that his responsibility would be less than fifty dollars.

Ultimately, Nolan's health plan denied coverage for his Vitamin D test. Instead of receiving an invoice for less than \$50, Nolan was charged \$292 for his Vitamin D test, a cost that was nearly 16 times higher than the \$18.93 listed on this Patient Acknowledgement form. Had Nolan been aware that he would have been charged nearly \$300 for one test, he either would have declined the test or gone elsewhere.

The Nevada Deceptive Trade Practices Act provides that a seller who knowingly "[f]ails to disclose material fact in connection with the sale" of services engages in a deceptive trade practice. The Fourth Circuit Appeals Court agreed with Nolan that the patient List Price, which is significantly higher than the health plan's negotiated rate, is known by LabCorp when it presents the Patient Acknowledgement form for signature, yet LabCorp fails to disclose it to insured patients. Accordingly, the Court found that by failing to disclose information that would be material to a reasonable patient, LabCorp violated the Nevada Deceptive Trade Practices Act.

Nolan also argued that LabCorp violated the Nevada Deceptive Trade Practices Act by including false and misleading information about the prices of the requested lab tests. However, in connection with this claim, the Court found that the Patient Acknowledgement form did not contain false or misleading information because it provided exactly what it says it provides; specifically, estimates based on the assumption that the services would be covered by the patient's insurance.

This case is a cautionary tale for insured consumers who willingly submit to the panel of laboratory tests prescribed by their physicians. Specifically, do not assume your insurance will pay for all the tests. For those insured patients to whom the cost is material, they should request the testing laboratory's list prices for each test; and if any seems too expensive, they should discuss with their prescribing physicians how essential each test is, and if there is a question, first check with the insurance company about whether the test in question will be covered.



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About the Author

Emily Madoff is the Managing Partner of Wolf Popper LLP.

Throughout her career, Emily has used the law to drive socio-political change, often protecting the public from consumer fraud. Emily recently focused on the rampant problems with surprise medical bills; she was instrumental in developing the Firm's cases in this area, several of which have settled with full recovery for the class. Emily presently is concentrating on using the law to expedite the benefits of diversity and inclusion.

A commercial attorney, Emily was mentored by Marty Popper, eventually inheriting his practice. As such, Emily has represented several missions to the United Nations and various governments and government officials. She is proud to have represented personally some early social justice luminaries, such as Freda Diamond and Ring Lardner Jr. To this day, Emily represents the Georgian artist, Zurab Tsereteli, an internationally-acclaimed monumentalist and UNESCO Goodwill Ambassador, whose works are installed worldwide, including "Good Defeats Evil," which statue sits on the front grounds of the United Nations headquarters in New York City. The Tsereteli family owns the largest winery in Georgia, producing Tsereteli Wine.

Emily has published many articles about the law, including for the New York Law Journal, an article explaining litigation funding (Analyzing the Fundamentals of Litigation Funding, August 19, 2013) and one about arbitration clauses in consumer contracts (Mandatory Arbitration Clauses in Consumer Contracts, July 5, 2016) and for Latin Lawyer, an article about the securities litigation spawned in the United States as a result of the Petrobras scandal in Brazil (Bringing 'big oil' to the Big Apple, March 2015), for a few examples.

Ms. Madoff is a graduate of Connecticut College (B.A., 1973), and Northeastern University School of Law (J.D., 1979). She is admitted to the Bars of the State of New York, the Commonwealth of Massachusetts and the United States District Court for the Southern District of New York.

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