



# NATIONAL INTELLIGENCE REPORT™

Covering Government Policy For Diagnostic Testing & Related Medical Services

Celebrating Our 35th Year of Publication

Vol. 14, Iss. 19, October 23, 2014

## INSIDE NIR

- CMS to delay pricing new drug codes..... 1
- Mayo sues former lab CEO over breach of contract, misappropriation of trade secrets..... 1
- Bostwick Laboratories settles whistleblower case for \$6 million..... 3
- Focus on Lab Institute: Labs need to realign approach to diagnostic services by focusing on physician, patient engagement* ..... 4
- Whiz kid receives Lab Innovation Award ..... 4
- Dave Dexter receives G2 Intelligence Laboratory Public Leadership Award..... 5
- Jazmen Myers receives G2 Intelligence Scholarship Award ..... 6
- Cigna sues HDL over patient inducements..... 8

[www.G2Intelligence.com](http://www.G2Intelligence.com)



### Upcoming G2 Events

*Conference*  
**Lab Sales and Marketing  
 A New Playbook for the  
 Changing Market**  
**Dec. 15-16, 2014**  
**Westin Kierland Resort & Spa**  
**Scottsdale, Ariz.**  
[www.G2Labsales.com](http://www.G2Labsales.com)

*Webinar*  
**Oct. 28, 2014**  
**2-3:30 p.m.**  
**Lessons for Laboratories:  
 How Utilization  
 Management Can Help  
 Control Costs and Improve  
 Outcomes**  
[www.G2Intelligence.com](http://www.G2Intelligence.com)

## CMS to Delay Pricing New Drug Codes

The Centers for Medicare and Medicaid Services (CMS) will delay pricing 63 new drug codes under the Clinical Laboratory Fee Schedule (CLFS) for 2015, the agency announced earlier this month.

In its CLFS preliminary determination, CMS says it is concerned about the potential for overpayment when billing for each individual drug test rather than a single code that pays the same regardless of the number of drugs that are being tested for. Therefore, it intends to delay pricing for these codes at this time, until further information and education is obtained.

At this point it's unclear just how Medicare will pay for drug testing in 2015. Diana Voorhees, chief executive officer of DV & Associates, believes it's likely that CMS will continue to use G codes. "I think payers who have followed the use of G codes will continue to do so, and that additional commercial payers will follow," she said in an e-mail. "Other private payers and maybe Medicaid will use new codes and crosswalk pricing to old codes. It may be like molecular coding in 2012."

For many of the other new and revised codes on the CLFS for 2015, CMS agrees with industry recommendations (see chart on next page).

*Continued on p. 2*

## Mayo Sues Former Lab CEO Over Breach of Contract, Misappropriation of Trade Secrets

In a case sure to resonate throughout the diagnostics industry, Mayo Clinic this month filed a lawsuit against Franklin Cockerill, M.D., the former president and chief executive officer of Mayo Medical Laboratories (MML), alleging misappropriation of trade secrets and breach of contract. The lawsuit alleges that Cockerill secretly and deceptively sought and accepted employment with one of MML's primary competitors months ago. Rather than disclosing this material conflict of interest, Cockerill continued to work as a director and officer of MML until Sept. 30, 2014, participating in confidential strategic decisions and planning and related litigation analysis of MML's and Mayo's business, the lawsuit alleges.

Cockerill began working for Quest Diagnostics Oct. 1 as vice president and chief laboratory officer. According to Mayo, Cockerill essentially will be doing at Quest exactly what he did at MML and Mayo "and will inevitably disclose MML and Mayo's trade secrets and confidential information to Quest, irreparably harming MML and Mayo."

*Continued on p. 7*

# NATIONAL INTELLIGENCE REPORT

PRELIMINARY DETERMINATIONS FOR MEDICARE LAB FEE SCHEDULE, 2015		
CODE/DESCRIPTOR	PRELIMINARY DETERMINATION	PROPOSED NLA
<b>THERAPEUTIC DRUG ASSAYS</b>		
80163 Digoxin; free	Crosswalk to 80162	\$18.12
80165 Valproic acid (dipropylacetic acid); free	Crosswalk to 80164	\$18.49
<b>MOLECULAR PATHOLOGY PROCEDURES TIER 1</b>		
81246 FLT3 (FMS-related tyrosine kinase 3) (eg, acute myeloid leukemia), gene analysis tyrosine kinase domain (TKD) variants (eg, D835, I836)	Gap-fill	
81288 (MLH1 (mutL homolog 1, colon cancer, nonpolyposis type 2) (eg, hereditary non-polyposis colorectal cancer, Lynch syndrome) gene analysis; promoter methylation analysis)	Gap-fill	
81313 (PCA3/KLK3 (prostate cancer antigen 3 [non-protein coding]/ kallikrein-related peptidase 3 [prostate specific antigen]) ratio (eg, prostate cancer))	Gap-fill	
<b>GENOMIC SEQUENCING PROCEDURES</b>		
81410 through 81471	Gap-fill	
<b>MULTIANALYTE ASSAYS WITH ALGORITHMIC ANALYSES</b>		
0006M (Oncology (hepatic), mRNA expression levels of 161 genes, utilizing fresh hepatocellular carcinoma tumor tissue, with alpha-fetoprotein level, algorithm reported as a risk classifier)	Gap-fill if the Medicare contractor determines the code is payable	
0007M (Oncology (gastrointestinal neuroendocrine tumors), real-time PCR expression analysis of 51 genes, utilizing whole peripheral blood, algorithm reported as a namogram of tumor disease index)	Gap-fill if the Medicare contractor determines the code is payable	
0008M (Oncology (breast), mRNA analysis of 58 genes using hybrid capture, on formalin-fixed paraffin-embedded (FFPE) tissue, prognostic algorithm reported as a risk score)	Gap-fill if the Medicare contractor determines the code is payable	
81519 (Oncology (breast), mRNA, gene expression profiling by real-time RT-PCR of 21 genes, utilizing formalin-fixed paraffin embedded tissue, algorithm reported as recurrence score)	Gap-fill if the Medicare contractor determines the code is payable	
<b>CHEMISTRY</b>		
83006 (Growth stimulation expressed gene 2 (ST2, Interleukin 1 receptor like-1))	Crosswalk to 82777	\$30.01
<b>MICROBIOLOGY</b>		
87505 (Infectious agent detection by nucleic acid (DNA or RNA); gastrointestinal pathogen (eg, Clostridium difficile, E. coli, Salmonella, Shigella, norovirus, Giardia), includes multiplex reverse transcription, when performed, and multiplex amplified probe technique, multiple types or subtypes, 3-5 targets)	Crosswalk to 87631	\$175.02
87506 (Infectious agent detection by nucleic acid (DNA or RNA); gastrointestinal pathogen (eg, Clostridium difficile, E. coli, Salmonella, Shigella, norovirus, Giardia), includes multiplex reverse transcription, when performed, and multiplex amplified probe technique, multiple types or subtypes, 6-11 targets)	Crosswalk to 87632	\$291.18
87507 (Infectious agent detection by nucleic acid (DNA or RNA); gastrointestinal pathogen (eg, Clostridium difficile, E. coli, Salmonella, Shigella, norovirus, Giardia), includes multiplex reverse transcription, when performed, and multiplex amplified probe technique, multiple types or subtypes, 12-25 targets)	Crosswalk to 87633	\$568.60
87623 (Infectious agent detection by nucleic acid (DNA or RNA); Human Papillomavirus (HPV), low-risk types (eg, 6, 11, 42, 43, 44))	Crosswalk to 87621	\$47.87
87624 (Infectious agent detection by nucleic acid (DNA or RNA); Human Papillomavirus (HPV), high-risk types (eg, 16, 18, 31, 33, 35, 39, 45, 51, 52, 56, 58, 59, 68))	Crosswalk to 87621	\$47.87
87625 (Infectious agent detection by nucleic acid (DNA or RNA); Human Papillomavirus (HPV), types 16 and 18 only, includes type 45, if performed)	Crosswalk to 87621	\$47.87
87806 (Infectious agent antigen detection by immunoassay with direct optical observation; HIV-1 antigen(s), with HIV-1 and HIV-2 antibodies)	Crosswalk to 87389	\$32.86

CODE/DESCRIPTOR	PRELIMINARY DETERMINATION	PROPOSED NLA
<b>REPRODUCTIVE MEDICINE PROCEDURES</b>		
89337 Cryopreservation, mature oocytes	This test code represents embryonic storage; therefore, it is not a clinical diagnostic test and should not be priced on the CLFS	
<b>G CODES</b>		
G0464 (Colorectal cancer screening; stool-based DNA and fecal occult hemoglobin (e.g., KRAS, NDRG4 and BMP3))	Crosswalk to 81315 + 81275 + 82274	\$501.78
Source: CMS, Preliminary Determinations, <a href="http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Downloads/CLFS-Preliminary-2015-10032014.pdf">http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Downloads/CLFS-Preliminary-2015-10032014.pdf</a> .		

## Bostwick Laboratories Settles Whistleblower Case for \$6 Million

**B**ostwick Laboratories (Uniondale, N.Y.) will pay more than \$6 million to settle a whistleblower lawsuit alleging the lab inappropriately billed federal health programs for laboratory tests.

The qui tam complaint was filed in May 2008 by Michael Daugherty, president of LabMD. Although the federal government in June 2011 decided not to intervene in the case, a senior district court judge in 2012 denied Bostwick’s motions to dismiss.

The settlement does not resolve allegations against David Bostwick, M.D., who is a separate defendant in the case. These charges are still pending, and Dr. Bostwick is expected to go to trial in late 2015.

Specifically, Daugherty alleged that Bostwick Laboratories routinely performed fluorescence in situ hybridization (FISH) testing on atypical urine cytology cases whether or not the referring physician had ordered FISH testing and then billed the government for the tests.

The lawsuit alleged that Bostwick performed both the professional and technical component of FISH testing but allowed referring physicians to bill for the professional component. Daugherty also alleged that Bostwick further induced physicians to send it testing by using a client billing scheme, whereby Bostwick charged the referring physicians a reduced amount for the FISH technical component. This allowed the referring physicians to mark up the test and bill Medicare for the full amount.

In a 2012 order denying Bostwick’s motion to dismiss the case, Judge Arthur Spiegel said Bostwick’s actions amounted to an inducement in violation of the anti-kickback statute and the Stark law.

In a statement released by Bostwick, the lab says it disagrees with and does not admit the allegations but agreed to settle the matters to put them behind it and to avoid the delay, uncertainty, and expense of protracted litigation.

“Bostwick Laboratories conducts its business with the highest standards of quality and integrity,” said Jerry Diffley, vice president and chief compliance officer. “This global settlement resolves several longstanding issues and enables us to focus on our company’s future, rather than the past. We remain strongly committed to compliance with the rules and regulations that govern our business practices, and we continue to have a robust compliance program in place.”

*Takeaway: Allegations of False Claims Act violations can cost a laboratory a lot of money, even if the claims are not proven. The best defense against such allegations is a thorough and comprehensive compliance program.* 

# focus on: *Lab Institute*

## Labs Need to Realign Approach to Diagnostic Services By Focusing on Physician, Patient Engagement

The future of the diagnostic laboratory industry was on everyone's mind as more than 500 people from clinical and anatomic pathology laboratories and related industries gathered in Washington, D.C., Oct. 15-17 for the 32nd annual Lab Institute. While it's clear that the industry faces many challenges going forward, the tone was mostly upbeat as lab leaders discussed new opportunities for laboratories and the importance of the lab in providing patient care.

"Clinical laboratories have to evolve," said BioReference Laboratories CEO Marc Grodman, M.D., in an opening keynote. "The lab industry has become payer-centric. We have to be provider-centric."

### Whiz Kid Receives Lab Innovation Award

Jack Andraka, a 17-year-old who invented a new rapid and inexpensive test for diagnosing pancreatic cancer, is the first recipient of G2 Intelligence's Lab Innovation Award, designed to recognize innovation in the field of medical diagnostics.

The award, sponsored by Halfpenny Technologies Inc., was presented by Jack Redding, senior vice president, sales and marketing, for Halfpenny.

Andraka, of Crownsville, Md., worked with a professor from Johns Hopkins University to develop a new dipstick-type test for pancreatic cancer using a novel paper sensor, similar to that of the test strip used in diabetes. The test is more than 90 percent accurate in detecting the presence of mesothelin, a protein that can indicate the presence of pancreatic cancer. The test is also effective for detecting ovarian and lung cancer, due to the same biomarker they have in common.

This shift was one of many discussed during the conference, which considered how laboratories and other providers of diagnostic services can best respond to the array of challenges and opportunities that are confronting an industry that has traditionally been slow to adapt to change.

Much of the discussion centered on the need to define—or, in most cases, redefine—the roles that laboratories can and do play in a health care system that is in the throes of unprecedented change. "I see our role as educating physicians and payers," noted Gail Marcus, CEO of Calloway Laboratories, who pointed to data transparency as a potential aid to labs seeking to fulfill this more consultative role that seizes upon the ability of laboratories to integrate and make actionable their vast storehouses of data.

"We are in the engine room of the health system," Jim Crawford, M.D., Ph.D., chair of the Department of Pathol-

ogy and Laboratory Medicine and senior vice president for laboratory services in New York's North Shore-Long Island Jewish Health System (NS-LIJHS), told Lab Institute attendees as he detailed initiatives that position pathologists and laboratories as leaders in driving coordinated care.

A local clinical laboratory can either be a vendor to one or more accountable care organizations (ACOs) or can be an integral component of an integrated health system ACO. Both have risks, he said, noting that vendors can be underbid and components can be outsourced. An integrated independent laboratory system is in a potentially stronger negotiating position, he added.

The laboratory of choice for ACOs is one that has data-driven assessment of current utilization practices, acts as a consultant for medical care rather than just a vendor of laboratory testing, uses data to identify opportunities to improve patient outcomes and make patient care more affordable, and provides access to information for patients and providers.

The laboratory at NS-LIJHS provides a good example for labs to follow, as it has a proven record of offering ACOs and payers the data and partnership they seek. For example, the lab worked with a major employer in the Orlando area, along with the Florida Health Care Coalition, the University of Florida, Cognoscenti Health Institute, and the Florida Hospital Diabetes Institute to improve outcomes for 151 employees with diabetes and 75 employees with prediabetes. The lab worked with the employer on screening, enrollment, diabetes education, quarterly labs and biometrics, free glucose meters and strips, and telephonic support for employee attendance.

The pathology-led program resulted in initial improvement in clinical indices, medical claims data, and employee self-reporting, as well as a drop in health care costs per member per month. As the benefits of the 12-month program began to dissipate following its cessation, the employer created a more sustained strategy for diabetes wellness programming.

Other organizations are also being proactive in realigning their approach to diagnostic services. These include Albuquerque, N.M.-based TriCore Reference Laboratories. Now under the leadership of veteran ARUP Laboratories executive Khosrow Shotorbani, TriCore is moving toward a population health management approach and not underestimating the opportunities associated with engaging patients, not just providers. “We have the opportunity to change how medicine is delivered,” said Shotorbani during a panel discussion. “Patient engagement is the next blockbuster drug of the 21st century.”

### Dave Dexter Receives G2 Intelligence Laboratory Public Service National Leadership Award



David Dexter (l) receives award from Scott Liff (r)

David Dexter, president and chief executive officer of Sonora Quest Laboratories LLC, a joint venture between Quest Diagnostics and Banner Health, is the 2014 recipient of the G2 Intelligence Laboratory Public Service National Leadership Award.

Sponsored by Kellison & Co. (Cleveland), the award was announced at this year's Lab Institute on Oct. 16 in Washington, D.C. Scott Liff, Kellison's president for business development, presented the award, which recognizes singular accomplishments that directly enhance patient care and the laboratory profession in one or more specific areas: basic and applied research, business creativity and innovations, public policy, and lifetime achievement. Dexter received the award in recognition of his business creativity and innovations.

For more than a decade, Dexter has led one of the most successful laboratory networks in the nation as the head of Sonora Quest and president and CEO of Laboratory Sciences of Arizona, which manages labs for the 13 Banner Health hospitals in Arizona.

According to G2 founder and executive editor Dennis Weissman, who announced the award, what makes Dexter's success unique is the very special workplace culture of excellence, quality, and community service that he has built among the 2,600 employees he leads. In fact, Sonora Quest has received a number of awards for this culture, including Best Places to Work award for five consecutive years by the *Phoenix Business Journal*, winner of the inaugural Arizona's Most Admired Companies Award by *BestCompanies AZ* and *Arizona Business Magazine*.

“Treating every employee with dignity and respect, Dex's business philosophy is that you need work-life balance, and that requires having perspective—so no matter how significant the business challenge, if you can keep it in proper perspective, it won't affect your leadership, health, or home life,” said Weissman. “And because he believes it's a moral and ethical responsibility to give back to the communities in which we work, Dex requires that both he and every one of his senior team leaders either lead a major charitable event each year, participate in a charitable board, or do both as part of their executive development.”

## Radical Payment Reform

Participants at Lab Institute also discussed challenges in reimbursement and discussed strategies for minimizing cuts in the future. While the sweeping changes to clinical laboratory payment enacted under the Protecting Access to Medicare Act (PAMA) may have been the lesser of two evils, the new system is far from perfect, industry representatives agreed.

Alan Mertz, president of the American Clinical Laboratory Association, emphasized that PAMA allowed the industry to stop further payment cuts under the Clinical Laboratory Fee Schedule until 2017. Before PAMA was enacted, Medicare was moving forward with plans to begin adjusting lab payment based on changes in technology, which most observers said would have resulted in additional reductions before 2017. PAMA halted this initiative.

“We didn’t have a choice,” said Mertz. “Given the choice of having your arm cut off in six months or two years, I would take the two years.”

Under PAMA, laboratories will have to report all non-capitated/bundled private market rates and test volume (per test) starting in 2016 and thereafter every three years for most tests. Medicare reimbursement rates will be calculated for each test based on weighted median of reported rates, with new Medicare lab reimbursement rates starting in 2017. Rate reductions will be phased in over six years, with a maximum possible reduction of 75 percent, according to Julie Scott Allen, representing the National Independent Laboratory Association.

### Texas State University Senior Jazmen Myers Receives G2 Intelligence Scholarship Award



Jazmen Myers (l) receives award from Brian Kemp (r)

Jazmen Myers, a senior in the clinical laboratory science (CLS) program at Texas State University in San Marcos, is the 2014 recipient of G2 Intelligence’s Scholarship Award for Excellence in the Clinical Laboratory Sciences, sponsored by McKesson.

Brian Kemp, executive director of client services, McKesson Business Performance Solutions, presented Myers the \$2,500 scholarship award at G2 Intelligence’s 32nd annual Lab Institute, held Oct. 15-17 in Washington, D.C.

Myers, who has excelled academically, served as the junior representative to the Texas State CLS Society last year and is currently vice president for

the Texas State CLS Student Society. She was one of only four junior CLS students to attend the state Texas Association for Clinical Laboratory Science conference last year and this year became the first Texas State CLS student to be elected as the vice chair of the American Society for Clinical Laboratory Science Student Forum.

According to Rodney Rohde, Ph.D., professor and chair of the CLS program, Myers demonstrates a high level of knowledge, motivation, and drive for educational excellence in the clinical laboratory sciences.

“Her personal attributes complement her academic ability,” wrote Rohde in her nomination. “She is accurate and dependable while maintain[ing] a positive attitude toward her classmates and teachers. Jazmen also brings a fantastic sense of humor and integrity to the workplace and classroom. I believe she has great potential for future achievement with respect to her current motivation and drive to succeed in this field.”

Scott Allen questioned whether the alternative offered by PAMA is really better than what labs were already facing. “I call PAMA radical payment reform,” she said. “And while we had a lot stacked against us, was the choice to agree to a mandatory reporting system and potentially greater cuts really the right choice?”

Mertz and Scott Allen did agree on one point, however—the need for hospital laboratories to participate in the mandatory reporting system, which will be used to set lab payment rates going forward. Mertz said he believes the way the law is written, hospital labs will have to report. However, no one will know for sure until the Centers for Medicare and Medicaid Services issues details of the how the new system will work.

“If hospital labs are not included, we will have to seek a legislative fix,” he noted. **G2**

## Mayo Sues Former Lab CEO Over Breach of Contract, *from p. 1*

Among the charges against Cockerill lodged in the complaint: breach of fiduciary duty as director and officer, breach of duty of loyalty as employee, breach of contract, and misappropriation of trade secrets. The lawsuit seeks monetary damages and restitution, as well as asks the courts to enjoin Cockerill from using Mayo's confidential information and trade secrets and to enjoin him from competing directly with Mayo and MML by working for Quest, having any contact with Quest, or soliciting Mayo or MML employees to join Quest.

Cockerill responded to the allegations in a statement released by his attorney, Nancy Brostrom Vollertsen, a Minneapolis attorney with Lindquist & Vennum LLP.

"Dr. Cockerill is disappointed that the Mayo Clinic has made such allegations and publicized its unproven claims in the media," said the statement. "Dr. Cockerill holds a stellar reputation in the medical community and has devoted more than 30 years of his life to the Mayo Clinic and the Rochester Community." Vollertsen also said she would be "filing responsive pleadings in this matter shortly."

### Deception Alleged

According to the lawsuit, Cockerill called together a meeting of his colleagues on July 17, 2014, where he announced that he was retiring from Mayo. "He tearfully informed his colleagues that his aged 85-year-old mother needed his help running

*The lawsuit seeks monetary damages and restitution, as well as asks the courts to enjoin Cockerill from using Mayo's confidential information and trade secrets and to enjoin him from competing directly with Mayo and MML by working for Quest, having any contact with Quest, or soliciting Mayo or MML employees to join Quest.*

the family fertilizer business in Nebraska, so he was retiring to assist her."

However, the complaint alleges that unbeknownst to MML, Cockerill actually began pursuing employment with Quest in February 2014.

Cockerill interviewed for the position of vice president and chief laboratory officer for Quest in March and by mid-April was the leading candidate for this high-level executive position. By the end of June 2014, Cockerill had accepted the job with Quest undertaking the same responsibilities he had at MML, according to the lawsuit.

"After announcing his 'retirement' on July 17, 2014, Dr. Cockerill, rather than disclosing his true intentions to go work for a competitor, wrongfully continued to participate in highly-confidential operations of MML and Mayo," alleges the complaint.

According to the lawsuit, it will be impossible for Cockerill to do his job at Quest without using or disclosing MML's and Mayo's confidential information and trade secrets. Cockerill's use or disclosure of confidential information and trade secrets to a competitor such as Quest would irreparably harm MML and Mayo, says the complaint.

The lawsuit was filed Oct. 14, 2014, in the District Court, Third Judicial District, in the state of Minnesota.

**Takeaway:** *This high-profile case alleging breach of contract and misappropriation of trade secrets against a leading lab executive could potentially have a far-reaching impact in the laboratory industry.* 

## Cigna Sues HDL Over Patient Inducements

**E**mbattled Health Diagnostic Laboratory (HDL) has yet another problem to worry about: Cigna Health has filed a lawsuit against the Richmond, Va.-based lab, alleging that it induced patients to use its lab through a fraudulent “fee-forgiving” scheme. In a complaint filed Oct. 15 in the U.S. District Court in Connecticut, Cigna says that HDL has unlawfully obtained at least \$84 million from Cigna and the benefit plan it serves. The insurer is seeking return of that money along with monetary damages. HDL has come under fire in recent months. The lab, which was highlighted in a *Wall Street Journal* article examining processing and handling fees (P&H) paid by laboratories to referring physicians, is under federal investigation. HDL stopped paying P&H fees June 25, 2014, after the Department of Health and Human Services Office of Inspector General (OIG) issued a special fraud alert saying such fees could pose a risk of inducement under the anti-kickback statute. HDL Chief Executive Officer Tonya Mallory resigned Sept. 23, reportedly for personal family reasons.

In the Oct. 15 lawsuit, Cigna says that one way it controls costs is by entering into agreements with health care providers under which the providers agree to accept fixed rates for services in consideration of other benefits, including access to plan members. Members are then encouraged to use in-network providers, including labs. When members use out-of-network labs, they must bear a portion of the costs either through copayment, coinsurance, or deductible obligations.

The complaint alleges that HDL, which does not participate in Cigna’s provider networks, undermines these safeguards by means of a fraudulent fee-forgiving scheme. “HDL lures patients from health plans that are administered or insured by Cigna by misrepresenting those patients’ responsibilities under the plans, by promising not to collect any co-payment, co-insurance, or deductible obligation, and by further promising not to seek reimbursement for any other portion of the bill that the plan does not cover,” reads the complaint. “HDL then misleadingly bills the plans themselves at exorbitant and unjustified ‘phantom’ rates—rates that misrepresent what HDL actually intended to collect.”

For example, for one patient, HDL submitted “charges” of \$2,979 to Cigna. Based on these charges, the patient’s cost-sharing responsibility under the plan was \$649. However, HDL charged the patient nothing. “‘Fee forgiving’ of this kind has long been recognized as a variety of medical billing fraud,” says the lawsuit. “More than two decades ago, the American Medical Association advised its members ‘[P]hysicians should be aware that . . . [r]outine forgiveness of waiver or copayments may constitute fraud under state and federal law.’”

The OIG reached the same conclusion, saying in a 1994 fraud alert that routine waiver of deductibles and copayment by charge-based providers, practitioners, or suppliers is unlawful because it results in . . . false claims . . . [and] excessive utilization of items and services paid for by Medicare.

**Takeaway: Routine waiver of patient obligations can land a lab in hot water.** 

**Note our change of address and phone numbers effective immediately.**

**To subscribe or renew NIR, call now +1-603-357-8101, 800-531-1026**

(AAB or NILA members qualify for a special discount, Offer code: NIRN11)

**Online:** [www.G2Intelligence.com/NIR](http://www.G2Intelligence.com/NIR)

**Email:** [customerservice@G2Intelligence.com](mailto:customerservice@G2Intelligence.com)

**Mail to:** G2 Intelligence  
24 Railroad Street  
Keene, NH 03431-3744 USA

**Fax:** +1-603-357-8111

*Multi-User/Multi-Location Pricing?*

*Please email [jjping@G2Intelligence.com](mailto:jjping@G2Intelligence.com) or call 603-357-8160.*

October 23, 2014 © 2014 Kennedy Information, LLC, A Bloomberg BNA Business, 800-531-1026. All Rights Reserved. Reproduction Prohibited by Law. [www.G2Intelligence.com](http://www.G2Intelligence.com)

**Notice:** It is a violation of federal copyright law to reproduce all or part of this publication or its contents by any means. The Copyright Act imposes liability of up to \$150,000 per issue for such infringement. Information concerning illicit duplication will be gratefully received. Reporting on commercial products herein is to inform readers only and does not constitute an endorsement. *National Intelligence Report* (ISSN 2332-1466) is published by G2 Intelligence, 24 Railroad Street, Keene NH 03431-3744 USA. Tel: 800-531-1026 or +1 603-357-8101. Fax: +1 603-357-8111. Web site: [www.G2Intelligence.com](http://www.G2Intelligence.com).

Kimberly Scott, Managing Editor, [kscott@G2Intelligence.com](mailto:kscott@G2Intelligence.com); Heather Lancey, Designer; Beth Butler, Marketing Director; Dan Houder, President and Publisher.

*Receiving duplicate issues? Have a billing question? Need to have your renewal dates coordinated? We'd be glad to help you. Call customer service at 800-531-1026.*