



**Statement for Hearing on
“Pandemic Profiteers: Legislation to Stop Corporate Price Gouging”**

**Submitted to the
House Committee Energy and Commerce
Subcommittee on Consumer Protection and Commerce**

February 2, 2022

AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. AHIP appreciates the Subcommittee’s attention on the widespread problem of price gouging during the COVID-19 pandemic. We look forward to working with the Subcommittee to put protections into place to stop price gouging, particularly as it pertains to COVID-19 testing.

Price Gouging in COVID-19 Testing Continues as a Significant Problem

The health and well-being of millions of Americans remains AHIP’s highest priority. As the COVID-19 pandemic continues to transform our nation, our member health insurance providers are committed to help prevent the spread of the disease. We remain committed to ensuring that Americans have access to affordable vaccines, tests, and treatments.

From the early days of the pandemic, health insurance providers engaged to support COVID-19 testing. Health insurance providers took decisive action to cover the costs of provider prescribed diagnostic tests to diagnose and treat COVID-19 – and we continue to do so.

In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which requires health insurance providers to pay the listed cash price the provider has posted on a public web site for tests to diagnose COVID-19 when there is no contract in place. In doing so, Congress effectively eliminated the ability of health insurance providers to negotiate more affordable COVID-19 testing prices. Moreover, the statute precludes medical management tools that health insurance providers could use to encourage consumers to use in-network providers and labs.

Unfortunately, as a consequence of this requirement, health insurance providers continue to see widespread price gouging associated with lab-conducted COVID-19 tests. In 2021, AHIP conducted a survey of health insurance providers in the commercial market to gather information on prices charged by out-of-network providers for COVID-19 tests. The results found that out-of-network providers charged significantly higher prices (more than \$185 when the average is \$130) for more than half (54%) of COVID-19 tests. The data show that the problem has gotten worse - not better - since the beginning of the pandemic.¹

In addition, the CARES Act requires health insurance providers to cover diagnostic tests that are for the purpose of medical decision making between a provider and patient. While the Centers for Disease Control and Prevention (CDC) has created an ICD-10 code to distinguish diagnostic testing from screening for decisions beyond medical treatment, it has not yet authorized its use. Consequently, health insurance providers have, since the onset of the pandemic, been unable to distinguish between those tests being conducted for diagnostic purposes, consistent with federal guidance, and those conducted for public health surveillance or for screening purposes such as attendance at work, school, travel, or a social gathering.^{2,3}

Over-the-counter (OTC) tests provide an alternative to higher-priced, provider or lab-administered tests. Health insurance providers support widespread access to OTC test options as another essential part of our country's COVID-19 strategy. Following recent guidance from the Administration, health insurance providers are covering the costs of diagnostic OTC COVID-19 tests during the public health emergency and guiding their members with information about how to access these covered tests.⁴ While the Administration's guidance takes some steps to address costs related to coverage of OTC tests, real risks of price gouging, fraud, and abuse remain and the resulting long-term costs will be considerable.

We recognize that COVID-19 is here to stay. The pandemic continues to require an extraordinary and cooperative response effort across the government, the private sector, and the entire health care system. To that end, in order to foster a strong long-term strategy that keeps health costs down, patient protections need to be put in place to stop the widespread price gouging for out-of-network COVID-19 testing.

Congress Can Take Action to Eliminate COVID-19 Test Price Gouging

Affordable and available testing is a critical component of the COVID-19 pandemic efforts. AHIP is encouraged that the Committee is considering legislative action to prevent price gouging during the pandemic. As such, we recommend the Committee consider policies that protect patients from the egregious price gouging on the COVID-19 tests that are essential tools in fighting this disease.

¹ https://www.ahip.org/documents/AHIP_IP-COVID19_TestPrices.pdf

² <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-44.pdf>

³ <https://www.cms.gov/files/document/covid-medicare-payment-covid-19-viral-testing-flow-chart.pdf>

⁴ <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf>

First, we recommend Congress take action to eliminate price gouging by eliminating the requirement that health insurance providers pay the “cash price” for COVID-19 tests delivered out-of-network. Sec. 3202 of the [CARES Act](#) requires plan to reimburse out-of-network diagnostic tests at “an amount that equals the cash price for such service as listed by the provider on a public internet website, or the plan or issuer may negotiate a rate with the provider for less than such cash price.” AHIP recommends amending this language to permit health insurance providers to base payment for COVID-19 tests administered out-of-network on their median in-network rate. With such a change, patients would remain protected from balanced billing, health insurance premiums would be guarded against price gouging and remain affordable, and providers and diagnostic labs would receive fair rates for their services.

Second, we recommend that Congress instruct the CDC to release guidance permitting the use of the ICD-10 COVID-19 screening test code. The coding guidelines should be made consistent with the clinical guidelines released by the CDC and Food and Drug Administration (FDA) that differentiate between testing for diagnostic, screening and surveillance purposes.^{5,6} Such guidance would also allow health insurance providers to implement testing policies consistent with federal coverage and payment policies. In addition, more precise coding will allow for more sophisticated tracking and research for combatting new waves of COVID-19 and other possible future pandemics.

Third, we recommend that Congress instruct the Centers for Medicare & Medicaid Services (CMS) to create HCPCS billing codes to create a systematic mechanism for tracking OTC tests. Health insurance providers need the ability to track claims for OTC COVID-19 tests to identify tests purchased under the requirement, reconcile against quantity limits, as well as monitor the supply chain, for fraud and abuse, and for equitable access.

Fourth, we support continued federal funding for broad-based access to OTC COVID-19 tests. The universally-available program established via the U.S. Postal Service has been very popular and implemented extremely efficiently. This program should be expanded to assure that all Americans regardless of coverage type have access to free COVID tests during the period of the public health emergency.

Conclusion

The COVID-19 pandemic has been an unprecedented public health crisis that has strained health systems around the world, causing extraordinary patient suffering and economic upheaval. However, during the surge of omicron variant, COVID-19 testing and the availability of COVID-19 vaccines were key to identifying the disease and preventing severe illness, hospitalizations, and death. As we plan for the future at this critical point in the pandemic, it is

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html>

⁶ <https://www.fda.gov/media/146666/download>

important for Congress to act and make widespread price gouging of COVID-19 tests a phenomenon of the past.

Health insurance providers are committed to working with Congress to pass legislation that eliminates price gouging and sets a reasonable market-based pricing benchmark for out-of-network COVID-19 tests, allows for appropriate tracking of tests administered and makes OTC tests universally available. We look forward to working with the Committee to build on our health care ecosystem, improve what is working, fix the gaps, and establish patient protections so that Americans can go about their daily lives safely.