

New Restriction on Billing for Anatomic Pathology Services

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On June 1, 2011, the State of Washington joined 17 other states in restricting the ability of physicians to purchase anatomic pathology services and re-bill the services to patients and payors. Prior to the enactment of House Bill 1190, which will be codified as a new section added to Chapter 48.43 RCW, state law did not clearly prohibit a physician from purchasing an anatomic pathology service at a discount from a pathology laboratory or other pathology provider, marking up the price of the

anatomic pathology service, and re-billing the service to the physician's patients and their payors. A 2005 Washington Attorney General Opinion raised serious concerns regarding this type of arrangement under the Washington fee splitting laws, but re-billing with a markup for purchased anatomic pathology services continued among many physicians, most commonly including urologists, gastroenterologists, and dermatologists, absent a specific statutory prohibition.

This practice of purchasing and anatomic pathology services with a markup in price has raised numerous concerns among medical professionals as well as legislators. Patients do not have the benefit of the discounted price paid by their physician who purchases the services (because the services are re-billed typically with a significant markup in price). The medical decision-making of the referring physician may be compromised because of the profit potential from the billing arrangement. The referring physician may select the provider of the anatomic pathology services (which are the critical diagnostic services with respect to cancer diagnosis) based upon the lowest cost to the physician (thereby permitting the largest

markup in price) rather than on the basis of quality or turnaround time. Furthermore, there have been concerns that some physicians may be more aggressive with respect to biopsy procedures for their patients (such as a greater number of prostate specimens taken by urologists) in order to increase profits from the billing of the additional pathology services.

The new Washington law, like the so-called direct billing laws in other states, is designed to remove the profit making potential, and realigns the medical decision making of the physician with the best interest of the patient. For purposes of this new law, anatomic pathology services include histopathology or surgical pathology services, cytopathology services (which include Pap smears, for example), hematology services, subcellular or molecular pathology services, and blood banking services. The new law explains that a laboratory or physician, whether located in Washington or in another state, that provides anatomic pathology services for patients who reside in Washington, may only bill the following persons or entities for the anatomic pathology services: (a) the patient, (b) the responsible insurer or third party payor, (c) the

hospital, public health clinic, or non-profit health clinic ordering such services, (d) the referring laboratory, but excluding a laboratory in a physician practice that does not perform the professional component of the anatomic pathology services, or (e) governmental agencies on behalf of the recipient of the service. The law also explains that no licensed practitioner in the state may directly or indirectly bill for anatomic pathology services unless such anatomic pathology services were rendered personally by the licensed practitioner or under his or her direct supervision. The new restriction does not prohibit billing a referring laboratory in instances where a specimen must be sent to the laboratory for consultation or histologic processing, but this “lab to lab” exemption does not include a laboratory of a physician group practice that does

not perform the professional component of the anatomic pathology service.

The reason for excluding physician practice laboratory that does not perform the professional component is that many referring physician practices have limited laboratories that perform a narrow range of clinical laboratory services. If physicians were able to take advantage of the “lab to lab” exemption under the new law, by claiming that their practices have laboratories and they therefore be permitted to purchase and re-bill the anatomic pathology service, the intent of the law could be subverted.

It is important to note that no patient, insurer, third party payor, hospital, public health clinic, or non-profit health clinic is required

to reimburse any licensed practitioner for charges for anatomic pathology services that are submitted in violation of the new law. Moreover, any licensed practitioner who violates these provisions is subject to disciplinary action under the Washington Medical Practice Act.

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