

# **TENNESSEE SOCIETY OF PATHOLOGISTS**

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February 26, 2016

Senator John Stevens  
Tennessee State Senate  
Suite 3 Legislative Plaza  
301 6<sup>th</sup> Avenue North  
Nashville, TN 37243

Representative Ron Travis  
Tennessee General Assembly  
301 6<sup>th</sup> Avenue North  
Suite G-3 War Memorial Building  
Nashville, TN 37243

***Re: Opposition to House Bill 1861 and Senate Bill 1782***

Dear Senator Stevens and Representative Travis:

The Tennessee Society of Pathologists (TSP) is writing in opposition to the above referenced legislation. TSP is state medical specialty society representing many practicing pathologists in the state. I am writing in opposition to House Bill 1861 and Senate Bill 1782. In particular, we do not believe that physicians should be financially penalized for furnishing medical services that the physician is legally and ethically obligated to provide to the patient, regardless of the patient's insurance status.

The health economic impact of the prohibition on physician billing will benefit health plans which can unilaterally set payment for all physicians (both in-network and out-of-network) under certain circumstances which are beyond the full control of the physician. Of significant note, a physician under provision (a) cannot bill a patient for out-of-network unless "the provider or facility has disclosed to the consumer the anticipated amount to be billed to the consumer for such services prior to the services being rendered."

The inherent nature of pathology work makes it impossible for an out of network pathologist to provide patients with a written notice prior to the service being rendered. In some cases, it is only during the course of the procedure that the need for pathological analysis may be evident. Furthermore, the call for pathologist involvement may be urgent and immediate, for example, providing information or guidance to the surgeon while the patient is under anesthesia.

Pathologists do not defer anatomic pathology procedures based on financial considerations, as this would potentially result in specimen degradation or delay in surgical action, especially while the patient is in surgery, thereby jeopardizing care, and/or the accuracy of a diagnosis. Consequently, the patient's medical care would be deleteriously impacted if the notice provision of the legislation, prior to performing services, were actually implemented.

Furthermore, the evaluation of some specimens may require additional complex studies, including the use of special stains or genetic analysis, all potentially unforeseen when the service is first performed. Special stains are used to help define and differentiate a diagnosis of the specimen. Genetic analysis will yield additional, critical information, potentially confirming a genetic alteration associated with a malignancy or providing crucial information about the selection or effectiveness of a particular therapy. The need for these additional procedures may not be known prior to the specimen being obtained and examined. This additional testing or specimen preparation may be performed at the laboratory receiving the specimen or require referral to specialized referenced laboratories, generating additional costs that could not have been contemplated or anticipated under the initial estimate of charges.

Please note, it is for these aforementioned reasons that both the National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Legislators (NCOIL) rejected from their model bills on insurance network adequacy any provision for health care professionals, including physicians, to provide patients with written notices as a prerequisite to providing health care services. NAIC and NCOIL did place the responsibility for such notices in advance of services upon the health plan.

**Accordingly, we would urge that the legislation delete provision (a) including any restriction on billing of the patient for out-of-network services actually provided by the out-of-network physician and in lieu thereof, we suggest the legislation expressly place the responsibility on the health plan as follows:**

(51) Failing to provide the notice under (a) and (b).

(a) A “managed health insurance plan” shall develop a written disclosure or notice to be provided to a covered person at the time of pre-certification, if applicable, for a covered benefit to be provided at a facility that is in the covered person’s health benefit plan network that there is the possibility that the covered person could be treated by a health care professional that is not in the same network.

(b) The disclosure or notice shall indicate that the covered person may be subject to higher cost-sharing, as described in the covered person’s plan summary of coverage and benefits documents, including balance billing, if the covered services are performed by a health care professional, who is not in the covered person’s plan network even though the covered person is receiving the covered services at a participating facility, and that information on what the covered person’s plan will pay for the covered services provided by a non-participating health care professional is available on request from the managed health care plan. The disclosure or notice also shall inform the covered person of options available to access covered services from a participating provider.

(c) If the managed health care plan, fails to provide the notice required under (a) and (b), the health care plan shall be financially responsible for any bill received by a patient from an out-of-network provider who has furnished services to the patient.

We believe that these notice requirements and provisions, as applied to managed health care plan, will ensure that patients can exercise their discretion in selecting the appropriate provider for the services. Moreover, we believe that by placing the responsibility for such notices on the appropriate entity (health plans) physicians can focus on ensuring that their patients receive high quality health care without undertaking statutorily prescribed notices that may impede or delay necessary physician services, to the potential detriment of patient care.

Please feel free to contact me if you have any concerns or questions. Thank you for your courtesies and consideration of these comments. Please feel free to contact me if you have any questions at (865)482-9633 or [psbntn9@yahoo.com](mailto:psbntn9@yahoo.com).

Sincerely,

A handwritten signature in black ink that reads "P S Bullock MD". The signature is written in a cursive style with a large, stylized initial "P" and "S".

Pamela S. Bullock, MD, FCAP  
President, Tennessee Society of Pathologists

Cc: Yarnell Beatty, Tennessee Medical Association  
Barry Ziman, College of American Pathologists