



COLLEGE of AMERICAN PATHOLOGISTS

February 21, 2018

Representative Susan Donovan
Rhode Island General Assembly
85 Smith St Suite 145, Providence, RI 02903

Re: Opposition to Voiding of Anti-Fraud Law for Pathology Services (House Bill 7421)

Dear Representative Donovan:

The College of American Pathologists (CAP) and the Rhode Island Society of Pathologists strongly oppose House Bill 7421. **This legislation would void fundamental anti-fraud and anti-markup protections for Rhode Island patients.** Quite simply, without clear or logical rationale, the legislation proposes to legalize what is clearly now “unlawful” business conduct that prevents health care fraud and abuse in the billing for pathology and laboratory services.

These anti-fraud protections found in current Rhode Island law (RI Gen L. § 23-16.2-5.1) have existed since 1979 and are currently codified in the laws of more than 19 states¹. Similar anti-fraud, and anti-markup protections applicable to pathology services are established in the Federal Medicare program since 1984 (see: **Social Security Act § 1833(h)(5)(A)**) and in the Rhode Island Medicaid program. The history of the Medicare direct billing law, cited above, was delineated by the Department of Health and Human Services as follows:

“When the Medicare program began, physicians billed Medicare for laboratory services they performed in their own office and for laboratory services they purchased at a discount from hospital and independent laboratories. Many physicians routinely “marked up” the cost of their purchased laboratory services when billing Medicare and other insurers. In 1980, the statute was changed to eliminate markups on purchased laboratory services. The law required physicians to disclose the actual cost of the laboratory services they purchased from other laboratories. Enforcement of this law was difficult and many physicians continued to purchase laboratory services at discount prices and bill Medicare marked up prices... In 1984, Congress again addressed the problem of

¹ Arizona, California, Colorado, Connecticut, Massachusetts, Nevada, New Jersey, New York, Rhode Island, Louisiana, Ohio, South Carolina, Tennessee, Indiana, Iowa, Maryland, Montana, Kansas, and Washington.



physician laboratory markups. **The Omnibus Deficit Reduction Act of 1984 prohibited physicians from billing for laboratory work they did not perform.**²

The nature of the markup abuse not only creates profiteering on laboratory and pathology services by physicians who order these services, but also presents an unethical incentive to order more laboratory and pathology tests than are medically necessary, in order to accrue the largest possible profit. This unethical profiteering is unlawful and largely impossible under the current Rhode Island law that prohibits ordering physicians from being paid for these services.

Naturally, such unethical inducements also have the potential to undermine health care quality to the detriment of patient care. It is for these reasons that ethics policies (11.3.1 Fees for Medical Services) of the American Medical Association (AMA) also explicitly deem such markup practices as unethical and call for direct billing by the provider of the service. The AMA policy, in part, states: “Physicians must not charge a markup or commission, or profit on services rendered by other health care professionals.”

As noted, to combat these abuses in the private payer market, more than 19 states, including Rhode Island, have analogous laws to prohibit ordering physician intermediaries from billing or being paid for pathology and laboratory services that they do not supervise or provide. A direct billing requirement is also established in every state Medicaid program, including the Rhode Island program, where payment for such services can only be made to a licensed clinical laboratory provider of such services.

Under current Rhode Island law, it is expressly and unequivocally unlawful to be paid or bill for laboratory or pathology services that a person or entity did not perform, unless the person or entity falls under the enumerated exemptions in the statute. Accordingly, health care fraud, illegal and unethical profiteering and markups cannot be levied on these services by physicians who are legally unable to bill or be paid for services they did not provide.

² Department of Health and Human Services, Office of Inspector General, “Medicare Payments for Clinical Laboratory Services: Vulnerabilities and Controls,” January 2000, OEI-05-00-00070, P4



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In the more the 25 years since these laws were first enacted, no state has repealed such direct billing law. Moreover, for the most part, states have expanded the purview of the laws to cover more pathology services in order to address concerns over health care fraud and abuse. For these many reasons, we urge opposition to House Bill 7421.

Sincerely,

Joe Saad, MD, FCAP
Chair, Federal and State Affairs Committee

cc: Mark Paul Legolvan, MD, FCAP, President, Rhode Island Society
of Pathologists
Steve DeToy, Director Government and Public Affairs, Rhode
Island Medical Society
Rhode Island House Health, Education & Welfare Committee