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Pathology Payment Issues

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There have been two recent developments of interest to those who provide or bill for pathology services. The first development — related to the so-called professional component of clinical pathology services — is of national interest. The second development — related to a new direct billing requirement — will interest those who provide anatomic pathology services to Maryland residents.

Professional Component of Clinical Pathology - *Health Options v. Palmetto Pathology Services, P.A.*, Fla. Dist. Ct. App. (April 16, 2008)

This case involved a lawsuit by a hospital-based pathology group challenging an HMO's refusal to pay for pathologist services related to clinical laboratory quality control, record keeping, establishment of protocols and test methodologies, supervision, and compliance related activities. The pathologists argued that by failing to pay for the services, which they referred to as the "professional component of clinical pathology" ("PC-CP"), the HMO did not pay the hospital a reasonable total charge for the services that its members received.

The pathologists demonstrated that the HMO discontinued making these payments to save money, anticipated that litigation would follow from its decision to discontinue the payments, and that Medicare and Medicaid payments to hospitals included payment for these services. By contrast, when the HMO stopped paying the pathologists for these services, it did not increase the hospital's payment rates. The HMO countered that these "non-patient specific services" were essentially overhead, not services that pathologists furnished to patients on a face-to-face basis, and that it paid the hospital for the pathology services that its members received. The HMO also relied on several technical defenses.

The Florida court, which was reviewing the decision of a lower court in favor of the pathologists, held that a medical provider could bring a legal action based on the state HMO act which required an HMO to pay for services furnished to its members. Additionally, because the state's definition of "physician care" included care *supervised* by physicians and amended regulations did not require services to be rendered *directly* to the HMO member, the HMO was required to pay for the PC-CP that its members received. The court also rejected the technical defenses on which the HMO relied, and left intact the lower court's judgment awarding approximately \$1.5 million to the pathologists.

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Ober | Kaler's Comments: Payment for the PC-CP from private third-party payers can result in a win-win situation for hospital-based pathologists and the hospitals in which they practice. For pathologists, it may present a significant new source of revenue. For hospitals, it may permit them to discontinue payments to pathologists for services for which the pathologists might receive payment directly from a third-party payer.

Direct Billing Requirement - 2008 Md. Laws. Ch. Nos. 195 and 196

The state of Maryland recently enacted a direct billing law applicable to anatomic pathology services, effective October 1, 2008. Therefore, as of that date, among other things, it will be impermissible for a clinical laboratory to bill a physicians practice for anatomic pathology procedures that the laboratory performed for patients of the practice.

Under the new law, generally, a clinical laboratory or physicians practice that performed an anatomic pathology service must bill the patient or responsible insurer or third-party payer for the service directly. The law includes various exceptions to this direct billing requirement including those that permit a laboratory to bill a hospital, and permit a laboratory to bill another laboratory that referred it the test specimen for performance of "histologic processing" or "anatomic pathology consultation." A physician or other health care practitioner can bill for anatomic pathology services only if it performed or directly supervised the service and satisfied other stated requirements.

The direct billing requirement will apply to any anatomic pathology service provided to a Maryland patient, even if the service is provided by a laboratory, physician or group practice that is located in another state. The law provides two types of "penalties" which may be imposed against a health care practitioner which violates the statute. First, a third-party payer may deny its claim for payment. Second, a health care practitioner may be subject to disciplinary action by its regulatory board.

Ober|Kaler's Comments: The intent of the statute is clear, *i.e.*, with limited exceptions, to require the entity that provided an anatomic pathology service to bill the patient or responsible third-party payer directly for the service. However, it is unlikely that its application will always be clear-cut. Based on past history, the state may be slow to provide helpful interpretative guidance.

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