

SUBJECT: Billing disclosure requirements for anatomic pathology services

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 6 ayes — Swinford, Christian, B. Cook, Flynn, Parker, Veasey

0 nays

3 absent — Paxton, Van Arsdale, Farrar

WITNESSES: (*On original version:*)

For —Michael Deck, Texas Society of Pathologists; E. Randy Eckert, College of American Pathologists; Thomas M. Wheeler, Texas Society of Pathology

Against —Albert Gros, Texas Medical Association; Bruce Levy, Texas State Society of Gastroenterology and Endoscopy, Texas Medical Association; (*Registered, but did not testify:* Tom Banning, Texas Academy of Family Physicians; Carrie Kroll, Texas Pediatric Society; David Marwitz, Texas Dermatological Society; Laurie Reece, Texas Society for Gastroenterology and Endoscopy; Michelle Romero, Texas Academy of Internal Medicine Services; Terrence Kuhlman; Beverly Nuckols)

On —Ronald P. Rapini

DIGEST: CSHB 1557 would add Occupations Code ch. 166, to define and create standards for billing of anatomic pathology services.

“Anatomic pathology services” would be defined as:

- histopathology or surgical pathology — the gross and microscopic examination and histologic processing of organ tissue performed or supervised by a physician;
- cytopathology — the microscopic examination, performed or supervised by a physician, of cells from fluids, aspirates, washings, brushings, or smears, including Pap smears;
- hematology — the microscopic evaluation of bone marrow aspirates and biopsies, performed or supervised by a physician, and peripheral blood smears reviewed by a pathologist;

- sub-cellular and molecular pathology; and
- a blood-banking service performed by a pathologist.

The bill would require a physician or any entity that did not directly supervise or perform anatomic pathology services for a patient to disclose the following in a bill or itemized statement for anatomic pathology services provided to the patient, insurer, or other third party payor:

- the name and address of the physician or laboratory that provided the services; and
- the net amount paid for each service provided by the physician or laboratory.

Failure to meet these requirements could subject the physician or other entity to penalties under the Occupations Code, including disciplinary action by the Texas Medical Board (TMB) and other licensing agencies.

The bill would take effect September 1, 2007, and would apply only to anatomic pathology services performed on or after the effective date of this bill.

**SUPPORTERS
SAY:**

CSHB 1557 would create transparency in the billing process for physicians who bill patients or insurers for lab services that they do not provide directly. It would require physicians to reveal the increasingly common practice of “mark-up billing” to patients and insurance providers. Mark-up billing occurs when a physician is paid a set amount by an insurance plan for the performance of anatomical pathology services but refers the performance of these services to a pathologist or a laboratory. The physician reimburses the pathologist or laboratory at a lower rate than the one paid by the insurance plan, and the referring physician keeps the difference. Physicians often employ this practice without revealing it in their bills or itemized statements, which is unethical. The bill would require physicians who practice mark-up billing to do so in the open.

The bill would curb over-testing, in which physicians order unnecessary pathological tests to receive financial remuneration and not because the tests are medically necessary. Studies have shown that physicians order up to 9.6 percent more tests in states that do not prohibit mark-up billing. Medical boards and attorneys general in other states have deemed the practice of markup billing unethical, and some insurance plans already

prohibit it. CSHB 1557 would require that physicians keep patients informed about the cost of the services.

The transparency requirements of this bill would limit the ability of some physicians to charge for services that they have not truly provided. The TMB is looking into excessive mark ups over the actual cost of these services by ordering physicians. However, the board cannot evaluate the magnitude of the problem if it does not receive complaints from patients or cannot independently learn of when mark ups are occurring and the amount of the mark ups. This bill would assist the board in that effort.

Furthermore, it is medically beneficial for patients to know the identity of the physician or laboratory that performed the service. This would assist a patient who changed treating physicians in maintaining continuity in medical record information. This is especially true for Pap tests in which prior diagnostic evaluation and specimens can assist in later diagnosis over a period of time.

**OPPONENTS
SAY:**

CSHB 1557 would place too much of the onus of enforcement on the patient. This bill would require only that billing statements be transparent. While patients may be curious about the various costs and providers attached to the performance of lab services, an insured patient who did not incur extra costs as a result of mark-up billing would be unlikely to object to the practice or report it to the TMB. Instead of merely requiring transparency in billing, Texas should follow the lead of 12 other states in banning the practice of mark-up billing altogether, which HB 1557 as introduced would have done.

NOTES:

HB 1557 as introduced would have prohibited a physician or other entity from billing for anatomic pathology services that the physician or other entity did not perform or supervise directly.

According to the Legislative Budget Board, CSHB 1557 would have no fiscal impact to the state. While the TMB and other licensing boards likely would incur costs in the course of investigating new complaints, it is assumed that these boards would adjust their fees to cover any costs.

The companion bill, SB 1832 by Duncan, passed the Senate on the Local and Uncontested Calendar on April 25 and was reported favorably, without amendment, by the House State Affairs Committee on April 30, making it eligible to be considered in lieu of HB 1557.

