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REGULATION OF DIRECT PATHOLOGY

BILLING

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark W. Walker

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the unlawful and unprofessional conduct provisions of the Division of Occupational and Professional Licensing.

Highlighted Provisions:

This bill:

- ▶ defines terms, including:
 - "health care provider"; and
 - "anatomic pathology services"; and
- ▶ establishes direct billing requirements for health care providers or a laboratory providing anatomic pathology services.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-501, as last amended by Chapter 280, Laws of Utah 2004

ENACTS:

58-1-501.5, Utah Code Annotated 1953



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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-1-501** is amended to read:

58-1-501. Unlawful and unprofessional conduct.

(1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful under this title and includes:

(a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title if the person is:

(i) not licensed to do so or not exempted from licensure under this title; or

(ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;

(b) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law;

(c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;

(d) knowingly permitting the person's authority to practice or engage in any occupation or profession licensed under this title to be used by another, except as permitted by law;

(e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission; or

(f) (i) unless Subsection (2)(m) or (4) applies, issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state:

(A) without prescriptive authority conferred by a license issued under this title, or by an exemption to licensure under this title;

(B) with prescriptive authority conferred by an exception issued under this title or a multistate practice privilege recognized under this title, if the prescription was issued:

(I) without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment; or

59 (II) based on a questionnaire completed by the patient on the internet, or toll-free
60 telephone number, when there exists no other bona fide patient-practitioner relationship; or

61 (C) in violation of Subsection (2)(m), when the licensed person who issued, or aided
62 and abetted another in the issuance of the prescription has violated Subsection (2)(m) on more
63 than 100 prescriptions within a 30 day period of time; and

64 (ii) Subsection (1)(f) does not apply to treatment rendered in an emergency, on-call or
65 cross coverage situation, provided that the person who issues the prescription has prescriptive
66 authority conferred by a license under this title, or is exempt from licensure under this title.

67 (2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined
68 as unprofessional conduct under this title or under any rule adopted under this title and
69 includes:

70 (a) violating, or aiding or abetting any other person to violate, any statute, rule, or order
71 regulating an occupation or profession under this title;

72 (b) violating, or aiding or abetting any other person to violate, any generally accepted
73 professional or ethical standard applicable to an occupation or profession regulated under this
74 title;

75 (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea
76 of guilty or nolo contendere which is held in abeyance pending the successful completion of
77 probation with respect to a crime of moral turpitude or any other crime that, when considered
78 with the functions and duties of the occupation or profession for which the license was issued
79 or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely
80 or competently practice the occupation or profession;

81 (d) engaging in conduct that results in disciplinary action, including reprimand,
82 censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory
83 authority having jurisdiction over the licensee or applicant in the same occupation or profession
84 if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary
85 proceedings under Section 58-1-401;

86 (e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar
87 chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the
88 ability of the licensee or applicant to safely engage in the occupation or profession;

89 (f) practicing or attempting to practice an occupation or profession regulated under this

90 title despite being physically or mentally unfit to do so;

91 (g) practicing or attempting to practice an occupation or profession regulated under this
92 title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

93 (h) practicing or attempting to practice an occupation or profession requiring licensure
94 under this title by any form of action or communication which is false, misleading, deceptive,
95 or fraudulent;

96 (i) practicing or attempting to practice an occupation or profession regulated under this
97 title beyond the scope of the licensee's competency, abilities, or education;

98 (j) practicing or attempting to practice an occupation or profession regulated under this
99 title beyond the scope of the licensee's license;

100 (k) verbally, physically, mentally, or sexually abusing or exploiting any person through
101 conduct connected with the licensee's practice under this title or otherwise facilitated by the
102 licensee's license;

103 (l) acting as a supervisor without meeting the qualification requirements for that
104 position that are defined by statute or rule; ~~or~~

105 (m) unless Subsection (4) applies, issuing, or aiding and abetting in the issuance of, an
106 order or prescription for a drug or device:

107 (i) without first obtaining information in the usual course of professional practice, that
108 is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to
109 the proposed treatment; or

110 (ii) based on a questionnaire completed by the patient on the internet, or toll free
111 telephone number when there exists no other bona fide patient-practitioner relationship or bona
112 fide referral by a practitioner involved in an existing patient-practitioner relationship~~[-]; or~~

113 (n) violating a provision of Section 58-1-501.5.

114 (3) ~~[Subsections]~~ Subsection (2)(m)~~[(i) and (ii) do]~~ does not apply to treatment
115 rendered in an emergency, on-call, or cross coverage situation.

116 (4) Notwithstanding Subsections (1)(f) and (2)(m), the division may permit a person
117 licensed to prescribe under this title to prescribe a legend drug to a person located in this state
118 if the division in collaboration with the appropriate professional board has permitted the
119 specific prescriptive practice of the legend drug by rule.

120 Section 2. Section **58-1-501.5** is enacted to read:

121 **58-1-501.5. Anatomic pathology services -- Billing violations.**

122 (1) As used in this section, the following definitions apply:

123 (a) (i) "Anatomic pathology services" including "technical or professional component
124 of anatomic pathology services" means:125 (A) histopathology or surgical pathology, meaning the gross examination of, histologic
126 processing of, or microscopic examination of human organ tissue performed by a physician or
127 under the supervision of a physician;128 (B) cytopathology, meaning the examination of human cells, from fluids, aspirates,
129 washings, brushings, or smears, including the pap test examination performed by a physician or
130 under the supervision of a physician;131 (C) hematology, meaning the microscopic evaluation of human bone marrow aspirates
132 and biopsies performed by a physician or under the supervision of a physician and peripheral
133 human blood smears when the attending or treating physician or other practitioner of the
134 healing arts or a technologist requests that a blood smear be reviewed by a pathologist;135 (D) subcellular pathology and molecular pathology; and136 (E) blood bank services performed by a pathologist.137 (ii) "Anatomic pathology services" including "technical or professional component of
138 anatomic pathology services" does not include the initial collection or packaging of a sample
139 for transport.140 (b) "Clinical laboratory" or "laboratory" means a facility for the biological,
141 microbiological, serological, chemical, immunohematological, hematological, biophysical,
142 cytological, pathological, or other examination of materials derived from the human body for
143 the purpose of providing information for the diagnosis, prevention, or treatment of any disease
144 or impairment of human beings or the assessment of the health of human beings.145 (c) "Health care facility" has the meaning provided in Section 26-21-2.146 (d) "Health care provider" includes:147 (i) an advanced practice registered nurse licensed under Chapter 31b, Nurse Practice
148 Act;149 (ii) a chiropractor licensed under Chapter 73, Chiropractic Physician Practice Act;150 (iii) a dentist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act;151 (iv) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;

152 (v) an optometrist licensed under Chapter 16a, Utah Optometry Practice Act;
153 (vi) an osteopathic physician licensed under Chapter 68, Utah Osteopathic Medical
154 Practice Act;

155 (vii) a podiatrist licensed under Chapter 5a, Podiatric Physician Licensing Act;
156 (viii) a physician licensed under Chapter 67, Utah Medical Practice Act; and
157 (ix) a physician's assistant licensed under Chapter 70a, Physician Assistant Act.

158 (e) "Insurer" includes:

- 159 (i) any entity offering accident and health insurance as defined in Section 31A-1-301;
- 160 (ii) workers' compensation benefits;
- 161 (iii) a health maintenance organization; or
- 162 (iv) any self-insurance, as defined in Section 31A-1-301, that offers health care
163 insurance or benefits.

164 (2) A clinical laboratory or health care provider providing anatomic pathology services
165 for a patient may present a bill or demand for payment for services furnished by the laboratory
166 or health care provider only to the following entities:

- 167 (a) the patient;
- 168 (b) the patient's insurer or other third party payor;
- 169 (c) the health care facility ordering the services;
- 170 (d) a referring laboratory, or health care provider if that laboratory or health care
171 provider performed either the technical or professional component of the anatomic pathology
172 services; or
- 173 (e) a state or federal agency or the agent of that agency, on behalf of the patient.

174 (3) (a) Except as provided in Subsection (6), a health care provider may not directly or
175 indirectly bill or charge for or solicit payment for anatomic pathology services unless either the
176 technical or professional component of those services were provided personally by the health
177 care provider or under the direct supervision of that health care provider providing that
178 supervision for the purposes of 42 U.S.C. 263a.

179 (b) Nothing in Subsection (3)(a) restricts the ability of a health care provider, who has
180 not performed or supervised either the technical or professional component of the anatomic
181 pathology service, to bill for services related solely to the collection and packaging of a sample
182 for transport, provided such billing does not include a charge for any technical or professional

183 component of anatomic pathology services.

184 (4) The following entities are not required to reimburse a health care provider for a bill
 185 or charge made in violation of this section:

186 (a) a patient;

187 (b) an insurer;

188 (c) a health care facility; or

189 (d) another third party payor.

190 (5) This section does not require an assignment of benefits for anatomic pathology
 191 services.

192 (6) This section does not prohibit billing between laboratories, health care providers, or
 193 both for anatomic pathology services in instances where the referring laboratory or health care
 194 provider has performed technical or professional components of anatomic pathology services
 195 and sends the sample to a specialist at another laboratory or health care provider for additional
 196 anatomic pathology services.

197 (7) This section does not prohibit a clinical laboratory or health care provider providing
 198 anatomic pathology services for a patient from presenting a bill or demand for payment for
 199 those services or presenting separate bills or demands for payment to a payor when allowed by
 200 this section.

201 (8) Nothing in this section ~~H~~→ :

201a (a) ~~H~~← requires an insurer or third party payor to make payments
 202 directly to a clinical laboratory or health care provider outside of a participating provider or
 203 contractual relationship ~~H~~→ ; or

203a (b) shall restrict the ability of the lab functions in the Department of Health to bill
 203b for services. ~~H~~← .

Legislative Review Note
 as of 1-17-07 6:43 AM

Office of Legislative Research and General Counsel

H.B. 292 - Regulation of Direct Pathology Billing

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/24/2007, 10:20:54 AM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst