



March 12, 2010

Testimony of Richard Eisen, MD

On Behalf of

Connecticut Society of Pathologists

Re: Opposition to HB 5476

I am Dr. Richard Eisen, an attending pathologist and Director of Anatomic Pathology at Greenwich Hospital and Associate Professor of Pathology at The Yale University School of Medicine. I am here today on behalf of the Connecticut Society of Pathologists in support of the current Connecticut law – enacted last year— that regulates billing for anatomic pathology services (for example Pap Tests and biopsies). This law protects patients against unethical “markup” charges that inflate the cost of healthcare. “Markup” charges occur when a physician sends a tissue specimen or Pap smear to a laboratory and requests that the laboratory bill the physician instead of the patient, or patient's insurance company, for the service. The physician will then bill the patient or the insurance company at a higher price and profit from the difference. **Under this law, the markup is effectively outlawed** because a physician that does NOT perform or supervise the anatomic pathology service is prohibited from billing the patient or payer for the service.

The federal government enacted a substantively similar direct billing law for Medicare patients **26 years ago**. Connecticut Medicaid has also required direct billing for these services since that time. In addition, 15 other states have enacted similar pathology billing laws in order to control healthcare costs. The New York direct billing law for pathology services dates to 1970.

The Committee should be clear that over the 40 year history of these laws, no state has deemed it appropriate to repeal a direct billing law for pathology services. In fact, most states—including California—in recent years have *expanded* the direct billing requirement for pathology services in order to more effectively control healthcare costs. (For example, California expanded its direct billing and anti-markup laws to encompass all anatomic pathology services in 2007). Furthermore, these laws are consistent with the ethics policy of the American Medical Association that states: “When services are provided by more than one physician, each physician should submit his or her own bill to the patient and be compensated separately, if possible. A physician should not charge a markup, commission, or profit on the services rendered by others.”

This Connecticut law is also consistent with billing and coding guidance of the American Medical Association (AMA). AMA has provided official coding guidance to physicians that office overhead expenses and other billing and administrative costs should **NOT** be a part of anatomic pathology billings. Unfortunately, there are physicians that do not voluntarily adhere to AMA ethics policy and AMA coding guidance. Physicians that believe that they are entitled to markup profits present the very justification for this law.

Federal and state direct billing laws by eliminating pathology markups also discourage over-utilization of laboratory tests. Pathology markups induce medically unnecessary utilization because physicians have a financial incentive to order more biopsies. The ordering of unnecessary laboratory tests insidiously inflates healthcare costs and is an improper practice.

At a time when patients and employers are struggling with the rising cost of healthcare, repeal of this law cannot be justified. Direct billing effectively stops the unethical practice of markups and is a well tested, proven public policy that should not be repealed. I would like to thank the Committee very much for their time and consideration.

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## E-6.10 Services Provided by Multiple Physicians

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Each physician engaged in the care of the patient is entitled to compensation commensurate with the value of the service he or she has personally rendered.

No physician should bill or be paid for a service which is not performed; mere referral does not constitute a professional service for which a professional charge should be made or for which a fee may be ethically paid or received.

When services are provided by more than one physician, each physician should submit his or her own bill to the patient and be compensated separately, if possible. A physician should not charge a markup, commission, or profit on the services rendered by others.

It is ethically permissible in certain circumstances, however, for a surgeon to engage other physicians to assist in the performance of a surgical procedure and to pay a reasonable amount for such assistance, provided the nature of the financial arrangement is made known to the patient. This principle applies whether or not the assisting physician is the referring physician. (II) Issued prior to April 1977; Updated June 1994.

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