

## ALERTS

### Healthcare Law Alert - State Of Illinois Enacts New Anti-Markup Provision For Anatomic Pathology Services

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On Dec. 4, the state of Illinois enacted [Public Law 098-1127](#), with both houses of the legislature passing the bill over the Governor's amendatory veto. The new law goes into effect on Jan. 1, 2015. The law has two fundamental requirements that directly impact how physicians can bill for "anatomic pathology services" in the state of Illinois. Anatomic pathology service is broadly defined, and likely includes most anatomic pathology tests ordered by physicians and performed in clinical laboratories or physician offices.

First, a physician who orders, but does not supervise or perform an anatomic pathology service must now notify the patient of the name and address of the laboratory or physician that performed the test as well as the actual amount the physician paid for that service. Second, physicians "when billing a patient, insurer, or third-party payer shall not markup, or directly or indirectly increase, the amount" of the actual charge.

Responsibility for enforcing the new law is vested in the Illinois Department of Insurance, but the law also grants patients a private right of action "to recover the actual amount paid for the bill" when they are a victim of a knowing or willful violation of the law. Physicians may still charge a specimen collection charge as long as it is limited to the physician's actual cost, and is separately itemized on the bill.

The law has several exceptions. Generally, the law's requirements are not applicable to anatomic pathology services "ordered or provided by":

1. a licensed hospital;
2. any public or non-profit health clinic; or
3. any government agency or its agents or employees.

Interestingly, the law does not define what it means for one of these entities to "provide" an anatomic pathology service. Therefore, it remains an open question as to whether the provisions of this law apply to services ordered by a private physician and performed in a hospital laboratory, even if the physician is the one billing for the service. In fact, there was an amendment proposed to the bill in the Senate on March 15, 2013, that would have specifically limited the bill's hospital exception to instances where the hospital itself is "billing for inpatient services or outpatient services from those facilities." The legislature's decision to leave this more specific language out of the final law raises questions about the breadth of the hospital exception. In addition, the question remains whether physicians are prohibited from marking up technical anatomic pathology services provided by outside slide preparation facilities that are not regulated as laboratories under Illinois or federal law.

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Specific billing arrangements should be reviewed with your healthcare legal counsel.

The law has prompted some physicians in Illinois to consider developing their own laboratories for the performance of in-office anatomic pathology services. Providers should be aware that Federal and State law both have regulatory requirements that will impact such a project.

For more information, contact the Barnes & Thornburg attorney with whom you work or a member of the firm's Healthcare Law Department in the following offices: Atlanta (404-846-1693), Chicago (312-357-1313), Columbus (614-628-0096), Delaware (302-300-3434) Elkhart (574-293-0681), Fort Wayne (260-423-9440), Grand Rapids (616-742-3930), Indianapolis (317-236-1313), Los Angeles (310-284-3880), Minneapolis (612-333-2111), South Bend (574-233-1171), Washington, D.C. (202-289-1313).

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