



HENRY McMASTER
ATTORNEY GENERAL

September 26, 2006

The Honorable Ben A. Hagood
Member, House of Representatives
654 Coleman Boulevard
Mount Pleasant, South Carolina 29464

Dear Representative Hagood:

We received your request for an opinion of our Office on behalf of Dr. John C. Maize, Sr. concerning House Bill No. 3891. Attached to your request, you included a copy of a letter previously written to Attorney General Henry McMaster from Dr. Maize. In this letter, Dr. Maize requests clarification of section 44-132-40 of the South Carolina Code. In his letter, Dr. Maize explains:

As a Dermatopathologist, I diagnose diseases of the skin. Sometimes the difference between a malignant lesion and a benign lesion can be minuscule, but making this call can mean life or death for the patient involved. I frequently am asked to perform consultations on difficult cases from around the country, and, I also occasionally send cases out to institutions such as the Mayo Clinic and Stanford University for consultation. Because of the sensitive nature of the work involved, it is imperative that physicians be able to consult on these cases to insure the best possible outcome for our patients.

The passing of House Bill 3891 into law in South Carolina puts us ahead of the curve in recognizing and curbing the possible exploitation of patients by protecting them from being billed inflated prices for pathology services. Other states are beginning to follow suit, but at a very slow pace. This leaves us with a problem when the Referral Laboratory is located in a state which does not have such a law. The Mayo Clinic, for example, has instituted a policy of refusing to bill patients or their insurance for consultations. They will only bill us, the referring physicians, who must pay for the service out of pocket and then bill the patient. Since it is illegal in South Carolina for us to pass on this cost to the patient or their insurance, we are put in a losing situation. Our hands are tied in recouping our costs, and at \$300.00 per consultation, this cost is significant. I believe this will

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ultimately inhibit consultation between physicians and possibly endanger the lives of South Carolina patients.

In Dr. Maize's opinion, he "believe[s] the wording in the statute regarding billing between laboratories must be excepting this type of consultative relationship, but the wording is poor and needs clarification." Thus, he requests an opinion to clarify the billing of consultation services under this Bill, "especially in cases where the referral laboratory is located in a state that does not recognize our billing law."

Law/Analysis

The Legislature enacted House Bill No. 3891, to which you and Dr. Maize refer, in 2005 via Act No. 10. 2005 S.C. Acts 43. It is our understanding that several states recently passed similar legislation to combat the potential for physicians to refer anatomic pathology services to a clinical laboratory for a given cost and subsequently mark up the cost billed to the patient or their insurance company.

This act added sections 44-132-10 to 44-132-50 to the South Carolina Code establishing procedures and requirements for the direct submission of claims for anatomic pathology services by the laboratories performing those services. Section 44-132-10 of the South Carolina Code (Supp. 2005) provides:

Except as provided in Section 44-132-20, no person licensed to practice in this State as a physician, surgeon, or osteopath, a dentist or dental surgeon, a nurse practitioner, or a physician's assistant shall charge, bill, or otherwise solicit payment for outpatient anatomic pathology services unless the services were rendered personally by the licensed practitioner or under the licensed practitioner's supervision.

Section 44-132-20 of the South Carolina Code (Supp. 2005), states to whom licensed practitioners may submit bills for anatomic pathology services.

A person who is licensed to practice medicine in this State or the professional legal entity of which the person is a shareholder, partner, employee, or owner, may submit a bill for outpatient anatomic pathology services only to:

- (1) the patient directly;
- (2) the responsible insurer or other third-party payor;

(3) the hospital, public health clinic, or nonprofit health clinic; or

(4) the referral laboratory or the primary laboratory.

S.C. Code Ann. § 44-132-20. Section 44-132-40 of the South Carolina Code (Supp. 2005) contains an exception to these principles: "The provisions of this chapter do not prohibit billing between laboratories for anatomic pathology services in instances where a sample or samples must be sent to another specialist." S.C. Code Ann. § 44-132-40.

In interpreting the above statutory provisions, we are mindful of the rules of statutory construction, the cardinal rule of which is to ascertain and effectuate the intent of the Legislature in drafting these provisions. South Carolina Dept. of Transp. v. First Carolina Corp. of South, 369 S.C. 150, ___, 631 S.E.2d 533, 535 (2006). "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning." Furthermore, "[s]tatutes which are part of the same legislative scheme should be read together." Great Games, Inc. v. South Carolina Dept. of Revenue, 339 S.C. 79, 84, 529 S.E.2d 6, 8 (2000).

Section 44-132-10 clearly prohibits a licensed practitioner who does not personally perform or supervise the performance of anatomic pathology services from billing a patient for those services. Furthermore, in those instances only the laboratory performing such services may bill the patient or the patient's insurance company. However, section 44-132-40 clarifies that should a laboratory receive a sample for the performance of anatomic pathology services, it may "refer" the sample to another specialist. Section 44-132-20 reinforces the ability to refer samples between laboratories by allowing one licensed to practice medicine or their office to bill the laboratory from which the referral initiated. Thus, given the plain language of these provisions and in reading section 44-132-40 in conjunction with section 44-132-20, we believe the Legislature intended for a laboratory receiving a sample from another laboratory to be able to bill the "referral" or "primary" laboratory and for the referral or primary laboratory to be able to bill the patient for both its performance of anatomic pathology services, as well as, those performed by the laboratory to which it referred the sample. However, under the wording of these statutes, we do not believe a licensed practitioner who does not perform or supervise the performance of anatomic pathology services may bill a patient for the performance of such services by a laboratory.

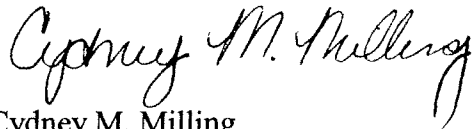
Under the scenario provided in Dr. Maize's letter, if Dr. Maize obtains a sample for purposes of performing anatomic pathology services and he discovers in the performance of those services that the sample requires the services of a specialist in another laboratory, he may refer the sample to that specialist who may also perform anatomic pathology services on the sample. The specialist, per sections 44-132-40 and 44-132-20, may bill Dr. Maize as the referral or primary laboratory. In turn, Dr. Maize may bill the patient or the appropriate third party payor. Thus, in this instance, even if Dr. Maize refers the sample to a laboratory out of state who refuses to bill the patient directly for its

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services, he may pay for that laboratory's services and bill the patient for these services. However, if Dr. Maize is not a referral or primary laboratory, but a physician who does not perform anatomic pathology services on the sample, despite the laboratory's policies, the statutory provisions prevent Dr. Maize from billing a patient for a laboratory's performance of anatomic pathology services.

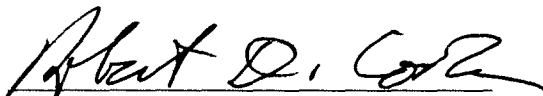
We hope this opinion sufficiently addresses your concerns regarding the provisions contained in chapter 132 of title 44 of the South Carolina Code.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General