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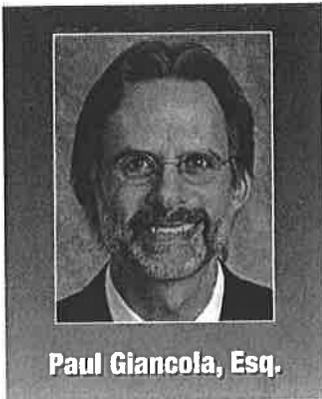
Trends in Healthcare Delivery and Payment

New AZ Law on Self Referred Laboratory Testing

Q: Now that individuals may obtain lab tests without an order, what is my liability if I refuse to discuss the results with my patient of a test I did not order?

A. Arizona recently passed a law that allows a person to obtain any laboratory test from a licensed clinical laboratory on a direct access basis without an order if the laboratory offers that laboratory test to the public on a direct access basis. The

law also requires the report of the test results to be provided by the lab to the person who was the subject of the test. The report must state in bold type that it is the responsibility of the person who was tested to arrange with the person's "health care provider" for consultation and interpretation of the test results.



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The law further provides that if the provider did not order the laboratory test:

- The provider's duty of care to a patient **does not** include any responsibility to review or act on the laboratory test result; and
- The provider is not subject to the liability or disciplinary actions for the failure to review or act on the results of the laboratory test.

Providers who order a laboratory test have a duty to the patient to both review and act on the results. The legislature was presumably sensitive about imposing a duty (and liability) on providers to review and act on patient self-ordered (consumer) test results. For this reason, a provider has no duty to review and act on such test results.

If a person wants a provider to interpret the test results, the law provides that the person tested is "responsible" to "arrange

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with the person's health care provider for consultation and interpretation of the test results." The law does not state how "consultation" should take place, for example must it be in person, and it does not address whether a provider may refuse to interpret the results or should be compensated for interpreting the test results. However, if such a consultation occurs, regardless of the form it takes, the provider will now have a legal duty to the patient to competently review and act on the test results.

It is likely that such direct access lab reports will be provided by testing labs and/or patients to providers. If this occurs, it is also likely that some providers will inadvertently review the results without being asked to or being aware it was self-ordered. Although the law provides immunity for "failure to review or act on the results," the law is ambiguous as to whether a "failure to act" would include a provider who inadvertently reviews the report, but fails to act on the results. Arizona case law suggests that in this situation, a provider who reviews the report likely triggers a duty to the patient to review it competently and to act on the results.

For this reason, providers may decide to have staff screen for such self-ordered laboratory test reports to avoid the potential



duty of care that could result from inadvertently reviewing them. Since it is the patient's responsibility to arrange for consultation, unless reviewed, it is not the provider's responsibility to follow-up with the patient when a self-ordered report is received.

inadvertently review the test results, you have likely assumed a duty and therefore potential liability to the patient for failure to appropriately review and/or act upon the results. As to whether a provider may refuse to interpret the test results on request with a patient, it may be acceptable to refuse if the test is outside of your scope of practice, if the patient refuses to make an appointment, or refuses to pay for the consultation. On the other hand, some providers may be pleased that their patients are proactively engaged in their own care, which is one of the claimed benefits of the law, and decide to review and follow-up on the results without a request for consultation or payment. However, if the patient is willing to comply with the law and arrange for a consultation, and the test is within the scope of your practice, a refusal could be a violation of the law and medical practice acts. **AM**

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As these lab reports are a communication related to a patient's physical health or condition prepared by a provider, they should be kept as part of the chart. However, if not reviewed, I suggest specifically noting on it: "report received but not reviewed per A.R.S. §36-468(C)."

In summary, it is likely that some patients who obtain direct access labs will have them sent to their providers whether or not they request interpretation. **Until a patient requests that it be interpreted as part of a consultation, there is no duty to review it and act on it.** However, if you voluntarily or

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