

**As Introduced**

**128th General Assembly  
Regular Session  
2009-2010**

**S. B. No. 309**

**Senator Miller, R.**

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**A B I L L**

To amend section 3702.31 and to enact sections 1  
3701.94 and 3701.941 of the Revised Code to 2  
prohibit clinical laboratory services providers 3  
from inducing physicians to refer patients in 4  
exchange for remuneration and from placing 5  
laboratory personnel in physician offices. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 3702.31 be amended and sections 7  
3701.94 and 3701.941 of the Revised Code be enacted to read as 8  
follows: 9

**Sec. 3701.94.** (A) As used in this section and section 10  
3701.941 of the Revised Code: 11

(1) "Clinical laboratory services" means the microbiological, 12  
serological, chemical, hematological, biophysical, cytological, or 13  
pathological examination of materials derived from the human body 14  
for purposes of obtaining information for the diagnosis, 15  
prevention, treatment, or screening of any disease or impairment 16  
or for the assessment of health. "Clinical laboratory services" 17  
also means the collection or preparation of specimens for testing. 18

(2) "Clinical laboratory services provider" means any person, 19  
or any employee, employer, agent, representative, or other 20

fiduciary of such person, who provides clinical laboratory services. 21  
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(3) "Group practice" has the same meaning as in section 4731.65 of the Revised Code. 23  
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(4) "Hospital" has the same meaning as in section 3727.01 of the Revised Code. 25  
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(5) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery. 27  
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(B) No clinical laboratory services provider shall, directly or indirectly, offer, give, pay, or deliver, or agree to offer, give, pay, or deliver, any remuneration, in cash or in kind, including any kickback, bribe, or rebate, to any physician or group practice to induce the physician or group practice to do either of the following: 31  
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(1) Refer patients to the clinical laboratory services provider; 37  
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(2) Enter into an arrangement whereby the clinical laboratory services provider and the physician or group practice agree to split fees. 39  
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(C)(1) Subject to division (C)(2) of this section, no clinical laboratory services provider shall give to a physician or group practice, supply the physician or group practice with, or place in the physician's or group practice's office any individual, including an employee, agent, representative, or other fiduciary of the clinical laboratory services provider, whether paid or unpaid, for the purpose of having that individual perform clinical laboratory services for the physician or group practice. 42  
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(2) Nothing in division (C)(1) of this section prohibits a clinical laboratory services provider from entering into a laboratory management services contract with a hospital, including a contract that requires the clinical laboratory services provider to place employees or agents who perform functions directly related to the provision of clinical laboratory services at the hospital, as long as the contract specifies that the hospital will pay fair market value for the laboratory management services rendered.

Sec. 3701.941. If the director of health determines that a clinical laboratory services provider has violated division (B) or (C) of section 3701.94 of the Revised Code, the director shall impose a civil penalty of not less than one thousand dollars and not more than ten thousand dollars for each day that the clinical laboratory violates either prohibition.

**Sec. 3702.31.** (A) The quality monitoring and inspection fund is hereby created in the state treasury. The director of health shall use the fund to administer and enforce this section and sections 3702.11 to 3702.20, 3702.30, 3702.301, ~~and~~ 3702.32, and 3701.94 of the Revised Code and rules adopted pursuant to those sections. The director shall deposit in the fund any moneys collected pursuant to this section or section 3702.32 or 3701.941 of the Revised Code. All investment earnings of the fund shall be credited to the fund.

(B) The director of health shall adopt rules pursuant to Chapter 119. of the Revised Code establishing fees for both of the following:

(1) Initial and renewal license applications submitted under section 3702.30 of the Revised Code. The fees established under division (B)(1) of this section shall not exceed the actual and

necessary costs of performing the activities described in division 81  
(A) of this section. 82

(2) Inspections conducted under section 3702.15 or 3702.30 of 83  
the Revised Code. The fees established under division (B)(2) of 84  
this section shall not exceed the actual and necessary costs 85  
incurred during an inspection, including any indirect costs 86  
incurred by the department for staff, salary, or other 87  
administrative costs. The director of health shall provide to each 88  
health care facility or provider inspected pursuant to section 89  
3702.15 or 3702.30 of the Revised Code a written statement of the 90  
fee. The statement shall itemize and total the costs incurred. 91  
Within fifteen days after receiving a statement from the director, 92  
the facility or provider shall forward the total amount of the fee 93  
to the director. 94

(3) The fees described in divisions (B)(1) and (2) of this 95  
section shall meet both of the following requirements: 96

(a) For each service described in section 3702.11 of the 97  
Revised Code, the fee shall not exceed one thousand seven hundred 98  
fifty dollars annually, except that the total fees charged to a 99  
health care provider under this section shall not exceed five 100  
thousand dollars annually. 101

(b) The fee shall exclude any costs reimbursable by the 102  
United States centers for medicare and medicaid services as part 103  
of the certification process for the medicare program established 104  
under Title XVIII of the "Social Security Act," 79 Stat. 286 105  
(1935), 42 U.S.C.A. 1395, as amended, and the medicaid program 106  
established under Title XIX of the "Social Security Act," 79 Stat. 107  
286 (1965), 42 U.S.C. 1396. 108

(4) The director shall not establish a fee for any service 109  
for which a licensure or inspection fee is paid by the health care 110  
provider to a state agency for the same or similar licensure or 111

inspection. 112

**Section 2.** That existing section 3702.31 of the Revised Code 113  
is hereby repealed. 114