Purpose

To restructure the provisions in the Health Insurance Act 1973 (the Principal Act) relating to the payment of benefits for pathology services and to amend various Acts concerned with health.

Background

The current scheme for the regulation of payments for pathology services was introduced in 1977 and is known as the Approved Pathology Practitioner (APP) scheme. One of the major features of the APP scheme is the relatively free entry into pathology services. To become an APP a medical practitioner, or a person employing medical practitioners, is required to sign a form containing certain undertakings and to pay a $10 fee (the fee has remained unchanged since 1977). A company, as well as natural persons, may become an APP. The major features of the undertakings to be entered into by an APP require that there is no sharing of benefits or fees between those ordering tests and those performing them and that an APP is not to provide incentives to a practitioner ordering tests.

In addition, the Principal Act prohibits certain actions that may lead to overservicing. The prohibitions include:

- an APP is not to make any payment to a requesting practitioner for the taking of specimens;
an APP is not to perform a pathology service for a practitioner with whom they share the costs of equipment or staff; and

an APP is not to provide nursing or other staff at a practitioners premises for the taking of pathology specimens.

There are three levels of payment for pathology services. The lowest payment is for hospital pathologists (HPs), the middle level is for non-specialist pathology providers (OPs), while the highest payments are for specialist pathologists (SPs). However, there is no requirement that the tests actually be performed by a specialist pathologist to attract the higher payment. It will be sufficient if the tests are performed on behalf of the specialist.

The provision of pathology services between 1975-76 and 1982-83 (i.e. the period before Medicare was introduced) was examined by the Penington Committee.[1] The Committee noted that pathology services provided per patient had increased by 105% over this period compared with an overall growth of 20% in services per patient for all other items. In addition, it was found that the growth in pathology services was concentrated in the SP (highest) fee level.[2]

More detailed statistics have become available since the introduction of Medicare on 1 February 1984, and these were examined by the Joint Committee of Public Accounts in its report 'Medical Fraud and Overservicing - Pathology' (No. 236) released in August 1985. Amongst other things the statistics showed that:

- annual Medicare benefits for pathology total $300 million;
- during the period 1 February 1984 to 31 March 1985 pathology services as a percentage of all Medicare benefit payments have increased from 14.5% to 15.55%;
- for the March quarter 1985, only 11% of all APPs provided over 1000 services;
where there is an option between OP and SP level benefits, 86.8% are billed at the SP level.\[3\]

The Committee also expressed concern at the concentration of pathology services. In the March 1985 quarter, the top 25 pathology groups received 50.77% of all Medicare benefits in respect of pathology. In the same period, 7 groups received 26.41% of all payments for pathology.\[4\] It was also found that for each of the top 25 pathology groups between 95.55% and 99.93% of their pathology benefits were paid at the SP rate.\[5\]

After examining the number of pathologists employed by the top 25 groups the Committee concluded: 'the number of specialist pathologists in the top 25 pathology groups appears to be insufficient to permit each specialist pathologist individually performing or 'effectively supervising' (except in a very general managerial sense) the very large numbers of tests billed at the SP rate, especially given that many of the pathology groups have several branch laboratories in different locations and/or States/Territories'.\[6\] This is possible under the present legislation which allows benefits to be paid for tests conducted 'on behalf of' an APP. The Committee notes that it is possible for a specialist pathologist to 'lend' their name to a practice as a silent partner with the result that the practice will then be able to bill at the SP rate.

Of major concern to the Committee was the growth of entrepreneurial pathology. The Committee was concerned that such people were more interested in profit than patient care and alleged that 'kickbacks' were used to attract work and encourage overservicing.\[7\] The Committee's concern was shared by professional bodies such as the Royal College of Pathologists of Australasia and the Royal Australian College of Radiologists.

The Committee made a number of recommendations to tighten control of pathology benefits and to prevent overservicing. This Bill implements a number of those recommendations.

Outline

The amendments relating to pathology benefits are contained in Part II of the Bill (clauses 3 to 54).
Main Provisions

A service will not be taken to be performed on behalf of an APP unless that person exercises a reasonable level of personal control and is personally responsible for the service (clause 5 which will insert a new section 3AAA into the Principal Act).

Clause 8 will amend section 4A of the Principal Act to allow the Minister to vary the pathology services table after reference to the Pathology Services Advisory Committee which is to be established by this Bill. At present, the Minister may vary the table after reference to the Medicare Benefits Advisory Committee.

Clause 10 will insert new sections 4BA, 4BB and 4BC into the Principal Act. Proposed sections 4BA and 4BB will allow the Minister to determine pathologist-determinable services and prescribed pathology services. Proposed section 4BC provides for the tabling and disallowance of determinations.

Section 11 of the Principal Act will be amended to allow requests for increased benefits to be referred to the Pathology Services Advisory Committee (clause 12).

Sections 16A, 16B and 16C of the Principal Act, which form part of the pathology benefits scheme, will be repealed and a new section 16A substituted by clause 15. Benefits will not be payable unless the service was necessary, was rendered for or on behalf of an APP, was rendered in an accredited laboratory and the proprietor of the laboratory was an approved pathology authority and the service was at the request of a practitioner. (However, there will be no need for a request for pathologist determinable services - proposed sub-section 16A(6)).

A new Part IIA will be inserted into the Principal Act by clause 19. The major features of the proposed Part are:

- the Minister will be able to approve the undertakings to be entered into by persons seeking to become APPs (proposed section 230B);
- the Minister is not to accept an undertaking unless he is satisfied that the person is a
fit and proper person (proposed sub-section 23DC(5)). The criteria upon which such a decision will be made are contained in proposed sub-section 23DC(6). In addition, proposed section 23DC will increase the fee to $100 or such higher amount as prescribed;

- an undertaking will remain in force for the period determined by the Minister or until it is terminated under proposed section 23DE or revoked in accordance with a determination of the Medicare Participation Review Committee or the person ceases to be a medical practitioner (proposed section 23DD);

- proposed section 23DE will allow an APP to terminate the undertaking;

- approved pathology authorities (e.g. companies wishing to receive pathology benefits) will also be required to give undertakings similar to those for natural persons (proposed section 23DF);

- proposed section 23DL deals with breaches of undertakings. The Minister will be able to suspend an undertaking and the matter will be considered by a Medicare Participation Review Committee. The person affected will have an opportunity to reply to any allegation;

- where the Minister has reasonable grounds for believing that a person has initiated excessive serving, the matter is to be referred to a Medicare Participation Review Committee (proposed section 23DM); and

- pathology laboratories will have to be accredited (proposed section 23DM).

Clause 21 will introduce a new Division 2A into Part V of the Principal Act to establish the Pathology Services Advisory Committee. The Committee will be established by proposed section 78B while its functions, which include the determination of matters referred to it by the Minister, are contained in proposed section 78C. The Committee will consist of seven members and the Chairperson will have to be a Deputy President of the Australian
Conciliation and Arbitration Commission (proposed section 78D).

Enquiries relating to pathology will be excluded from the functions of the Medical Services Committees of Inquiry (clause 22).

Medicare Participation Review Committees will be established to examine breaches of the undertakings given by pathologists (clause 35). The Committees will be able to make various determinations, such as to counsel or reprimand a practitioner or that the undertaking be revoked. The Committees will also determine if there has been excessive serving. The same determinations may be made as for a breach of undertakings (clause 37).

Clause 43 amends section 1245 of the Principal Act to require the Minister to revoke an undertaking if a Committee so determines. In addition, the Minister may publish a determination in the Gazette (clause 43).

It will be an offence for a person who renders pathology services to offer any inducement, or to threaten any disadvantage, to encourage a practitioner to request pathology services (clause 47 which will amend section 129AA of the Principal Act).

A new Schedule 1A, titled Pathology Services Table, will be inserted into the Principal Act by clause 52.

Clause 56 will amend section 36 of the Health Insurance Commission Act 1973 to widen the Commission's investment powers to allow investments on behalf of the Commission to be made by an approved person or body.

The States Grants (Nurse Education Transfer Assistance) Act 1985 will be amended to provide supplementary cost grants and to provide finances for development grants (clause 73).

The remainder of the Bill amends the National Health Act 1953 and the Tuberculosis Act 1948 to remove sexist language or as a consequence of the amendments to the Principal Act.

For further information, if required, contact the Education and Welfare Group.

2 July 1986

Bills Digest Service

LEGISLATIVE RESEARCH SERVICE
References

2. Ibid., p.47.
3. Joint Committee of Public Accounts, Report No. 236, Medical Fraud and Overservicing - Pathology, August 1985, pp.7 to 15.
4. Ibid., p.13.
5. Ibid., p.16.
6. Ibid., p.67.
7. Ibid., p.98.

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