



Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2007

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Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2007

Date introduced: 29 March 2007

House: House of Representatives

Portfolio: Health and Ageing

Commencement: Except for item 5 of Schedule 1, the Bill commences on Royal Assent. Item 5, which is the key provision dealing with accreditation of diagnostic imaging premises and bases as a condition of Medicare payments, commences on 1 July 2008.

Purpose

This Bill establishes the framework for the introduction of an accreditation scheme for diagnostic imaging practices covered by the Radiology Quality and Outlays Memorandum of Understanding (Radiology MOU). This is to be done through amendments to the *Health Insurance Act 1973* (the HIA).

Background

Diagnostic imaging and Medicare

The term diagnostic imaging refers to a range of diagnostic medical services including ultrasound, computed tomography (CT), nuclear medicine, radiography (x-ray), magnetic resonance imaging (MRI), positron emission tomography (PET) and bone densitometry.¹

The Australian Government provides Medicare rebates (payments) for a number of diagnostic imaging services listed in the Diagnostic Imaging Services Table. The legislative framework for this is comprised of the:

- *Health Insurance Act 1973*
- Health Insurance Regulations 1975, and
- Health Insurance (Diagnostic Imaging Services Table) Regulations.

The Table of Diagnostic Imaging Services is set out in Category 5 of the [Medicare Benefits Schedule \(MBS\)](#).

Management of diagnostic imaging services under Medicare is undertaken cooperatively between the Government (Department of Health and Ageing, or DOHA), and sector

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representatives (the Royal Australian and New Zealand College of Radiologists and the Australian Diagnostic Imaging Association) through the Radiology MOU. There are additional MOUs for cardiac imaging, nuclear medicine imaging and obstetrical and gynaecological ultrasound. The four diagnostic imaging MOUs were negotiated as part of the 2003-04 Budget process for managing Medicare funded diagnostic imaging services.²

The Radiology MOU is the largest of the diagnostic imaging MOUs and accounts for around 80 per cent of all diagnostic imaging services under Medicare.³

Accreditation scheme

As part of negotiations for the Radiology MOU, the Government and the diagnostic imaging sector representatives agreed to introduce an accreditation scheme for radiology practices.

As described in the Explanatory Memorandum, accreditation is ‘a process of externally reviewing an organisation’s performance against a defined set of standards’.⁴ Accreditation schemes are widely used throughout the health sector both in Australia and overseas to provide a framework for continuous improvement in the delivery of safe and high quality health care.

Under the scheme being implemented through this Bill, all diagnostic imaging practices providing services under the Radiology MOU ‘will need to be accredited by an approved accreditation provider in order for Medicare benefits to be payable for the services they provide’.⁵

The Bill will allow the Minister to establish through a legislative instrument the rules and operational details of the accreditation scheme, including the Standards, the names of the approved accreditors, the obligations of approved accreditors, the accreditation process and the period of accreditation.⁶ The Bill has also been designed to enable the introduction of accreditation schemes for other diagnostic imaging services in the future without further amendments to the HIA.⁷

The legislative instrument establishing the accreditation scheme for the Radiology MOU will be introduced ‘when the details of the scheme are finalised’.⁸ The scheme will commence on 1 July 2008.⁹

For further background to the Radiology MOU accreditation scheme see the DOHA webpage, [Introduction of a New Accreditation Scheme for Practices providing Radiology Services](#), and the [Explanatory Memorandum](#).

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Commentary on the Bill

There does not appear to have been any public commentary on the Bill from interest groups, media commentators or the opposition and minor parties. This may be because the details of the scheme are not yet known.

Diagnostic imaging sector stakeholders raised a number of issues and concerns at accreditation scheme consultation meetings organised by DOHA in August 2006. According to DOHA, these included the:

- cost of accreditation to practice sites and the resulting impact on businesses and healthcare consumers
- ambitious implementation timetable and the need for accreditation providers and practice sites to be well informed about assessment requirements, including the radiology accreditation standards, well in advance of 1 September 2007
- need for the new accreditation scheme to accommodate the diversity of business structures particularly where components of the service are undertaken by different practices
- need for the complaints handling mechanism to distinguish between frivolous and legitimate complaints and for the investigation of complaints by accreditation providers to be limited to matters related to compliance with accreditation standards, and
- importance of involving all provider groups in the development of the radiology accreditation standards to ensure their relevance and currency both in the immediate and longer term.

Further information on the position of stakeholders can be obtained from the DOHA webpage, [Introduction of a New Accreditation Scheme for Practices providing Radiology Services](#), and the [Explanatory Memorandum](#).

Financial implications

According to the Explanatory Memorandum, the introduction of the accreditation scheme will require enhancements to Medicare Australia's Medicare processing systems.¹⁰ The estimated cost of this is \$1.2 million.

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Main provisions

Item 5 inserts **proposed section 16EA**. This provides that, unless either the Minister directs otherwise or the service is covered by relevant regulations, Medicare benefits are only payable for diagnostic imaging services done either:

- at premises that are accredited to perform the particular relevant sort of diagnostic imaging procedure, or
- using portable equipment that is otherwise located or stored at an accredited base or premises.

A Ministerial direction in the above context is not a legislative instrument.

Item 11 inserts **proposed sections 23DZZIAA-DZZIAG** which set out the framework for diagnostic imaging accreditation schemes. The Explanatory Memorandum comments that the allowance for more than one accreditation scheme is to cater:¹¹

for situations where there may be a need for accreditation schemes with different rules to cater for the diverse range of clinical settings in which diagnostic imaging services are rendered.

The accreditation scheme(s) are established by legislative instrument, and thus disallowable by Parliament in the usual manner.¹² The actual accreditation of diagnostic imaging premises will be done by ‘approved accreditors’. These persons will be appointed via legislative instrument. The legislative instrument establishing a scheme may specify the conditions with which persons or organisations must comply to get approval and stay approved. It may also provide that Ministerial powers under the scheme be delegated to persons such as departmental officers and employees of Medicare Australia.

Under **proposed section 23DZZIAC**, an accreditation scheme must include a process for reconsideration of an accreditation decision. In cases where a person has their accreditation revoked, the scheme must provide for a stay on implementation of the decision until the reconsideration process has been exhausted (assuming the person applies for reconsideration of the revocation). However, this requirement does not apply where the relevant accreditation has been revoked on the grounds that there is ‘potential risk to public health and safety’.

In addition to the **proposed section 23DZZIAC** reconsideration process, there is a further appeal process to the Minister: **proposed section 23DZZIAD**. The Minister may either confirm the decision or set it aside and substitute a new accreditation decision. Whilst a little unclear, the ability of the Minister to delegate his or her powers under **proposed subsection 23DZZIAA(5)** via a signed instrument would probably not extend to the **proposed section 23DZZIAD** process.

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Under **proposed section 23DZZIAE**, the proprietor of a diagnostic imaging premises or base that does not have accreditation must inform a prospective patient that no Medicare benefit is payable for any diagnostic imaging procedure done at the premises or using equipment from that base. They may do this by either giving the patient a written notice to this effect or prominently displaying a similar notice where the procedure is proposed to be carried out. The notice must also tell the patient the reason no Medicare benefits are payable is because of the lack of accreditation. A failure to inform patients as required is strict liability offence carrying a penalty of 10 penalty units (\$1 100). In cases where a patient has not been informed before the procedure, the Minister may nonetheless direct that the relevant Medicare benefit be paid, but in such cases the benefit is recoverable from the proprietor as a debt to the Commonwealth: **proposed section 23DZZIAF**.

Existing section 23DZZI provides that that each partner in a partnership shares equal responsibility for the legal obligations applying under Division 4 of Part IIB to a proprietor of a registered diagnostic imaging premises or a mobile base. This is irrespective of what is contained in the relevant partnership agreement. **Proposed section 23DZIAG** applies this joint responsibility principle to the Division 5 accreditation obligations (and penalties) that are imposed by **item 11**.

Item 12 provides for transitional arrangements. If a proprietor lodges an application for accreditation by 1 July 2008, they will be deemed to be accredited until certain times set out in **sub-items 12(3)-(4)**.

Concluding comments

This Bill does not appear, in itself, to be controversial. The Government and diagnostic imaging sector representatives agreed to the introduction of an accreditation scheme as part of negotiations for the Radiology MOU in 2003. Further, accreditation schemes are widely accepted throughout the health sector as a method for reviewing and improving systems of care.

Nevertheless, the Bill does not provide operational details of the proposed scheme, such as the Standards to be used, the names of the approved accreditors, the accreditation process and the period of accreditation. Rather, it simply allows the Minister to establish, through a legislative instrument the rules and operational details of the scheme. Given that diagnostic imaging sector representatives have previously raised concerns in relation to operational details for the scheme, it is possible that similar concerns may be raised again when the details of the scheme are announced.

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Endnotes

1. *Diagnostic Imaging*, Department of Health and Ageing (DOHA), at: <http://www.health.gov.au/internet/wcms/publishing.nsf/Content/Diagnostic+Imaging-1>, accessed 3 May 2007.
2. Explanatory Memorandum, p. 2.
3. *ibid.* p. 1.
4. *ibid.* p. 1.
5. *ibid.* p. 1.
6. *Plain English Guide—Proposed amendments to the Health Insurance Act 1973 through the Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2007*, DOHA, at: <http://www.health.gov.au/internet/wcms/Publishing.nsf/Content/diagnosticimaging-accred-plainengguide.htm>, accessed 3 May 2007.
7. Explanatory Memorandum, p. 1.
8. *Plain English Guide—Proposed amendments to the Health Insurance Act 1973 through the Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2007*, *op. cit.*
9. *Introduction of a New Accreditation Scheme for Practices providing Radiology Services*, DOHA at <http://www.health.gov.au/internet/wcms/publishing.nsf/Content/diagnosticimaging-accred>, accessed 3 May 2007.
10. Explanatory Memorandum, p. 1.
11. *ibid.* p. 11.
12. Assuming the accreditation scheme is not an intergovernmental scheme within the meaning of subsection 44(1) of the *Legislative Instruments Act 2003*.

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