



## Health Insurance Amendment (Pathology Requests) Bill 2010

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## Health Insurance Amendment (Pathology Requests) Bill 2010

**Date introduced:** 10 February 2010

**House:** House of Representatives

**Portfolio:** Health and Ageing

**Commencement:** Schedule 1 commences 1 July 2010

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

The Health Insurance Amendment (Pathology Requests) Bill 2010 (the Bill) proposes amendments to the *Health Insurance Act 1973* (the Act), that would remove the requirement that a request for a Medicare eligible pathology service be made to a particular pathology provider. This would allow a patient to take their pathology request to a pathology provider of their own choice.

### Background

Under Medicare arrangements, if a medical practitioner decides that it is clinically necessary, she/he may refer a patient to an approved provider for a diagnostic test. This referral normally takes the form of a written request for a particular service.

The Act currently requires that in order for a Medicare benefit to be payable, a designated pathology provider must be named in the referral request.<sup>1</sup> This means that a patient must take the request for service to the pathology provider specified by their doctor. Many doctors use pre-branded forms that include the company details of a particular provider for this purpose.

In contrast, the requirement to nominate a particular provider is not a condition of a referral request for a diagnostic imaging service. Under diagnostic imaging arrangements, a patient can take their request for service to any approved and accredited provider.<sup>2</sup>

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1. *Health Insurance Act 1973* subsection 16A(3).

2. See *Medicare Benefits Schedule Book*, p. 551, [http://www.health.gov.au/internet/mbsonline/publishing.nsf/Content/2C3B0FAC365E1877CA25767200168230/\\$File/201001-MBS.pdf](http://www.health.gov.au/internet/mbsonline/publishing.nsf/Content/2C3B0FAC365E1877CA25767200168230/$File/201001-MBS.pdf)

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The proposed provisions in this Bill would remove the requirement that a particular pathology provider be specified in the request for referral. The proposed amendments would change the wording to specify that a pathology provider be in receipt of a referral in order for that request for service to be Medicare rebatable.<sup>3</sup> This would allow the patient to take the pathology request to any approved and accredited pathology provider.

However, it is important to note that there is nothing in the proposed provisions of this Bill which would prohibit a referring doctor from recommending a particular provider to the patient. Indeed, a discussion paper released by the Department of Health and Ageing acknowledges that the practice of doctors discussing possible providers with patients should be encouraged.<sup>4</sup>

The Government has indicated that it intends to amend regulations to clarify that requests for pathology can be taken to any approved provider. Specifically, the regulations will require that any pre-branded forms used by doctors must include a statement to this effect, although these regulations are not expected to come into force until after July 2011. This is to allow the Government time to consult with the sector on the wording of these statements.<sup>5</sup>

### **Basis of policy commitment**

The proposed changes to pathology referrals were announced as part of the 2009–10 Budget. It is one of two reforms the Government is proposing for pathology and diagnostic imaging arrangements that together are intended to increase competition and improve patient choice.<sup>6</sup> The other reform, which is yet to be implemented, would allow pathology providers to operate an unlimited number of collection centres. The total cost of these reforms is estimated to be \$3.4 million over four years.<sup>7</sup>

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3. With the exception of a pathologist-determinable service, which is covered under a separate section 16A(6).
  4. Department of Health and Ageing 'Removal of restrictions on pathology request forms' web page, viewed 17 February 2010, <http://www.nhhrc.org.au/internet/main/publishing.nsf/Content/pathology-leg-reqfrms>
  5. N Roxon, 'Second reading speech: Health Insurance Amendment (Pathology Requests) Bill 2009', House of Representatives, *Debates*, p. 7, 10 February 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-02-10%2F0021%22>. The consultation process is currently underway.
  6. N Roxon (Minister for Health and Ageing), L Tanner (Minister for Finance and Deregulation), *Increasing competition in pathology and diagnostic imaging*, media release, 12 May 2009, viewed 17 February 2010, <http://www.health.gov.au/internet/budget/publishing.nsf/Content/budget2009-hmedia15.htm>
  7. Australian Government, *Budget measures: budget paper no. 2: 2009–10*, Commonwealth of Australia, Canberra, 2009, p. 292.

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### Committee consideration

The Selection of Bills Committee (the Committee) recommended the Bill be referred to the Community Affairs Legislation Committee for inquiry and report by 12 May 2010. The Committee's reasons for referral and principle issues for consideration include:

- The onus being on the patient to choose the pathologist
- Examination of any possible problems arising between the referring doctor and the pathology provider
- Examination of problems that may arise due to differences in technical measurements adopted by different pathologists
- Examination of any impacts on arrangements between general practitioners (GPs) and pathologists for emergency or out-of-hours contacts.<sup>8</sup>

### Position of significant interest groups/press commentary

When the measure was announced in the Budget, some pathologists expressed concern. The Royal College of Pathologists Australasia claimed it is the 'professional right' of doctors to determine to whom they refer their patients, and that removing this right could affect quality of care.<sup>9</sup>

A discussion paper prepared by the Department of Health and Ageing that invited interested stakeholders to make submissions by no later than 22 February 2010 was recently released.<sup>10</sup> However, the fact that the Bill was introduced prior to this deadline prompted some surprise.<sup>11</sup>

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8. Selection of Bills Committee, *Report no. 2 of 2010*, the Committee, 24 February 2010, viewed 25 February 2010, [http://www.aph.gov.au/Senate/committee/selectionbills\\_ctte/reports/2010/rep0210.pdf](http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2010/rep0210.pdf)
  9. Royal College of Pathologists Australasia, 'Budget cuts a health risk', media release, 13 May 2009, viewed 17 February 2010, [http://www.rcpa.edu.au/static/File/Asset%20library/public%20documents/Media%20Releases/2009/Budget\\_Cuts\\_Health\\_Risk.pdf](http://www.rcpa.edu.au/static/File/Asset%20library/public%20documents/Media%20Releases/2009/Budget_Cuts_Health_Risk.pdf)
  10. Department of Health and Ageing, *Removal of restrictions on pathology request forms: discussion paper*, Department of Health and Ageing, Canberra, 2010, viewed 26 February 2010, [http://www.nhhrc.org.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/\\$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf](http://www.nhhrc.org.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf)
  11. M Metherell, 'Pathology change 'increases risks'', *The Age*, 11 February 2010, p. 8, viewed 17 February 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FE5VV6%22>

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Concerns have also been raised that if a patient is free to take their referral to any pathologist, rather than the one usually preferred by their GP, this could hinder communication between the referring doctor and the pathologist or result in pathology results being misinterpreted or missed.<sup>12</sup> However, as noted in the Minister's second reading speech, GPs will still be free to make recommendations.<sup>13</sup>

## Financial implications

The specific measures proposed in this Bill are estimated to cost \$140 000 over two years. This will fund amendments to pathology request forms and a communications strategy.<sup>14</sup>

## Main provisions

**Schedule 1** of the Bill contains proposed amendments to the Act. As previously mentioned, these proposed amendments would have the effect of removing the existing requirement that a pathology request be made *to a particular approved pathology practitioner or authority*, while retaining the requirement that a written request for pathology services be made by the treating practitioner.

**Item 1** proposes to **amend subparagraph (d)(ii) of the definition of 'professional service'** in **subsection 3(1)** of the Act by omitting the words 'to whom the treating practitioner has made a request for the service' to simply 'who received a request for the service made by the treating practitioner'.

Amendments, with similar effect, are proposed to **section 16A** of the Act (Medical benefits in relation to pathology services) by **items 2–9**.

**Item 10** proposes to repeal **subsection 16A(8)** of the Act. **Subsection 16A(8)** currently has the effect of deeming a pathologist to be the proprietor of a laboratory in certain circumstances. This provision would no longer be relevant under the proposed new pathology request arrangements.

**Items 11–13** propose to amend **section 23DK** of the Act, which provides for request and confirmation forms. These proposed amendments are similar to those proposed in **items 1–9** above.

As in **item 10** above, **item 14** proposes to repeal **subsection 23DK(11)** of the Act, because it would no longer be relevant under the proposed new pathology request arrangements. Currently, **subsection 23DK(11)** provides that references made, in section

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12. Ibid.

13. N Roxon, 'Second reading speech', op. cit., p. 7.

14. Explanatory memorandum, Health Insurance Amendment (Pathology Requests) Bill 2010, p. 1.

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23DK, to approved pathology practitioners include references to requests *deemed*, under section 16A, to have been made to those approved pathology practitioners.

## **Concluding comments**

The Bill proposes amendments which would remove requirements that a designated pathology provider be specified in a referral for pathology, allowing patients to take their pathology referral to any approved provider. This would align pathology referral requirements with those of diagnostic imaging. However, regulations requiring wording on pathology referral forms to be amended to reflect this change will not be promulgated until July 2011, allowing for a consultation process to occur.

While the Government argues the measure will improve patient choice, some have argued that communications between pathology providers and referring doctors could be undermined and hence affect the quality of patient care.

The referral to a Senate Committee for examination may delay the passage of the Bill.

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