



Health Insurance Amendment (Pathology Requests) Bill 2010

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Health Insurance Amendment (Pathology Requests) Bill 2010

Date introduced: 20 October 2010

House: House of Representatives

Portfolio: Health and Ageing

Commencement: The day after Royal Assent

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, 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 will allow a patient to take their pathology request to a pathology provider of their own choice.

The Bill was first introduced in February this year, but lapsed when Parliament was prorogued.¹ The text of the current Bill is unchanged from this earlier version.

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.² 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 pathology provider for this purpose.

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1. Health Insurance Amendment (Pathology Requests) Bill 2010 was first introduced on 10 February 2010. Although it passed through the House of Representatives, it failed to pass through the Senate before the Parliament was prorogued. See the *Senate Bills List*, 20 October 2010, p. 55, viewed 22 October 2010, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillslst%2Fbillslst_c5cb7dfd-6ea5-42d2-bea7-a4c40e628ce8%22
 2. *Health Insurance Act 1973* subsection 16A(3).

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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.³

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.⁴ 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, in a discussion paper the Department of Health and Ageing acknowledged the practice of doctors discussing possible providers with patients, a practice which it noted 'should be encouraged'.⁵ The Health Minister also indicated that there may be valid clinical reasons for recommending a particular pathology provider, and that doctors should continue to be encouraged to discuss options with patients.⁶

The Government has indicated that within twelve months of the commencement of this measure, 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 produced by pathology providers that are used by doctors must include a prominent and understandable statement to this effect.⁷

Basis of policy commitment

The proposed changes to pathology referrals were announced as part of the 2009–10 Budget. This 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.⁸ The other reform, which is yet to be implemented, would allow pathology providers to operate an

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3. Department of Health and Ageing (DoHA), *Medicare benefits schedule book*, Canberra, DoHA, 1 July 2010, p. 529, viewed 22 October 2010, [http://www.health.gov.au/internet/mbsonline/publishing.nsf/Content/BBE433BF3FE34A39CA257735001236D4/\\$File/201007-MBS.pdf](http://www.health.gov.au/internet/mbsonline/publishing.nsf/Content/BBE433BF3FE34A39CA257735001236D4/$File/201007-MBS.pdf)
 4. With the exception of a pathologist-determinable service, which is covered under a separate section 16A(6).
 5. Department of Health and Ageing, 'Removal of restrictions on pathology request forms', webpage, viewed 22 October 2010, <http://www.health.gov.au/internet/main/publishing.nsf/Content/pathology-leg-reqfrms>
 6. N Roxon, 'Second reading speech: Health Insurance Amendment (Pathology Requests) Bill 2010', House of Representatives, *Debates*, p. 3, viewed 22 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-10-20%2F0013%22>
 7. *Ibid.*
 8. 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 22 October 2010, <http://www.health.gov.au/internet/budget/publishing.nsf/Content/budget2009-hmedia15.htm>

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unlimited number of collection centres. The total cost of these reforms is estimated to be \$3.4 million over four years.⁹

Committee consideration

On February 24 2010, the earlier version of the Bill was referred to the Community Affairs Legislation Committee (the Committee) for inquiry and report by 12 May 2010. Details of the inquiry are at the inquiry [webpage](#). In making its referral to the Committee, the Selection of Bills Committee noted a number of issues had been raised by stakeholders. These included:

- 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.¹⁰

The Committee received nine submissions and conducted a public hearing in Canberra on 30 April 2010. A number of issues were raised by stakeholders (see below for discussion) and highlighted in the Committee's report, which was tabled on 12 May 2010. The Committee's majority view was that these issues could be best addressed by 'effective discussions' between doctors and patients. It noted the primary focus of the Bill was to improve choice for patients, an aim it supported. Given that these issues were effectively dealt within the context of patient/doctor consultations, the Committee recommended that the Bill be passed. The Coalition Senators issued a minority report which recommended the Bill be amended to allow referring doctors to specify a pathology provider in circumstances where there is a justifiable clinical need.

Position of major interest groups

When this measure was first announced in the 2009–10 Budget, some pathologists expressed their concern. The Royal College of Pathologists Australasia (RCPA) claimed it is the 'professional right' of doctors to determine to whom they refer their patients, and warned that removing this right could affect quality of patient care.¹¹ Later, in evidence to the Committee, the RCPA pointed out that 'patient choice should not come at the expense of quality health outcomes'.¹²

9. Australian Government, *Budget measures: budget paper no. 2: 2009–10*, Commonwealth of Australia, Canberra, 2009, p. 292.

10. Selection of Bills Committee, *Report no. 2 of 2010*, the Committee, 24 February 2010, viewed 25 October 2010, http://www.apf.gov.au/Senate/committee/selectionbills_ctte/reports/2010/rep0210.pdf

11. Royal College of Pathologists Australasia, *Budget cuts a health risk*, media release, 13 May 2009, viewed 25 October 2010, http://www.rcpa.edu.au//static/File/Asset%20library/public%20documents/Media%20Releases/2009/Budget_Cuts_Health_Risk.pdf; see also, M Metherell, 'Pathology change 'increases risks'', *The Age*, 11 February 2010, p. 8, viewed

The Australian Medical Association (AMA) and the Royal Australian College of General Practitioners (RACGP) were also concerned about maintaining quality in patient outcomes. In particular, they raised the issue that on occasion, a doctor might have specific clinical reasons for wanting the patient to attend a particular pathology provider, for example, because of the particular expertise of that pathologist. They argued that the option of specifying that a pathology request form be presented to a particular pathology provider should remain available to doctors in these circumstances.¹³

Other possible negative outcomes were raised by medical stakeholder groups, including:

- If a patient in exercising their choice took a form to a pathology provider who did not have an established working relationship with the referring doctor, delays could result or pathology results be misdirected¹⁴
- Continuity of results could be compromised if a patient chose a different pathology provider to the one recommended by their doctor, or failed to inform their doctor if they changed pathology providers¹⁵
- If a patient attended different pathology providers for the same test over time, differences in 'reference ranges' or methodologies across different pathology laboratories could hamper the identification of changes in patient's condition over time¹⁶
- By giving patients choice there could be 'unintended consequences' if pathology providers were encouraged to market their services directly to patients.

Some criticisms were also made about the consultation process. The RCPA expressed concern that the legislation proposing the measure was introduced before the expiration of the submission deadline of a Department of Health and Ageing (DoHA) discussion paper that invited stakeholders to comment on the proposal.¹⁷ In evidence to the Committee, the President of the RCPA cautioned that presenting the legislation before the completion of the consultation process risked 'alienating stakeholders'.¹⁸

The Committee noted that others made arguments in support of the Bill. The Consumer's Health Forum of Australia (CHF) welcomed the proposed provisions because they believed they would

17 February 2010,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FE5VV6%22>

12. Senate Community Affairs Legislation Committee, *Health Insurance Amendment (Pathology Requests) Bill 2010 [Provisions]*, The Senate, Canberra, May 2010, p. 6.

13. Ibid, p. 8.

14. Ibid, p. 14.

15. Ibid, p. 17.

16. Ibid.

17. See Department of Health and Ageing (DoHA), *Removal of restrictions on pathology request forms: discussion paper*, DoHA, Canberra, 2010, viewed 5 November 2010,

[http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/\\$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf); Op. cit, RCPA.

18. The Committee, op. cit, p. 4.

deliver more choice for patients and involve them more effectively in their own health care. They noted that surveys showed that patients valued choice, and wanted to be able to access the 'most cost effective' pathology provider.¹⁹ CHF also highlighted the need for effective communication between the patient and the referring doctor. If a patient was fully informed of the referring doctor's reasons for recommending that the patient attend a particular pathology provider, she/he would be more likely to follow that recommendation.²⁰

DoHA pointed out that convenience and cost were two important factors for patients. Although pathology has traditionally experienced high levels of bulk billing, resulting in patients facing minimal out of pocket costs, patients could face higher costs if a pathology provider changed their billing practices. If patients were able to choose their pathology provider they could change their provider if significant changes in billing practices occurred.²¹ Convenience was also identified by the CHF as a significant issue, particularly for those patients who were referred to providers which were located far from where the patient lived. For patients with chronic conditions, transport and convenience could pose particular problems.

In a submission to the Committee, DoHA concluded that enabling patients to choose their pathology provider would result in greater competition in the sector, downward pressure on out of pocket costs for patients and the maintenance of high rates of bulk billing.

Financial implications

The specific measures proposed in this Bill are estimated to cost \$180 000 over two years. This will fund amendments to pathology request forms and a communications strategy.²²

Key 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, for Medicare benefit purposes, a pathology request be made to a particular approved pathology practitioner or authority. The requirement that a written request for pathology services be made by the treating practitioner is retained.

Item 1 proposes to amend **subparagraph 3(1) (d)(ii)** regarding the definition of 'professional service' 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**.

19. Ibid, p. 5.

20. Ibid, p. 10.

21. Ibid, p. 22.

22. Explanatory Memorandum, Health Insurance Amendment (Pathology Requests) Bill 2010, p. 1.

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 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 is identical to a Bill which was introduced in February 2010, but which lapsed due to the proroguing of Parliament. The Bill would partially implement a 2009–10 budget measure, which seeks to improve competition in the pathology and diagnostic imaging sectors.

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 a later date, allowing for a consultation process to occur.

The Bill was referred to a Senate Committee for inquiry and report. The Committee recommended the Bill be passed, although a minority report from Coalition Senators recommended one amendment.

A number of issues were raised by stakeholders, including issues around patient choice and convenience, clinical reasons for nominating particular pathology providers, competition in the sector, quality of care, the patient doctor relationship and the relationship between pathology providers and referring practitioners. While the Government argues the measure will improve patient choice, a view shared by a consumer group, some practitioner groups have argued that communications between pathology providers and referring doctors could be undermined and hence affect the quality of patient care, and that patient choice should not compromise quality health outcomes.

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