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Health Insurance Amendment (Pathology Requests) Bill 2010

The AMA fears that the Health Insurance Amendment (Pathology Requests) Bill 2010 (the Bill) shows a lack of understanding of how complex and important the use of expert pathology services are, at a variety of levels. In our submission we make constructive recommendations for amendments to the Bill that are critical to patient safety and quality care. For those circumstances where the selection of the pathology provider does matter, we need to ensure the system does work.

Accordingly, we seek an amendment to the Bill to cover situations where a treating medical practitioner requires, for valid clinical or practical reasons, that a specific pathology provider to perform a test.

All medical practitioners develop long-standing relationships within the medical fraternity to ensure they provide high quality medical care to their patients that is informed by additional expert medical opinion when it is required. Relationships between treating doctors and pathologists are no exception and there will be good clinical reasons why on occasions a treating doctor will want the expert opinion of a particular and clearly identified pathology provider.

In her second reading speech, the Minister for Health and Ageing said, "The government supports a patient's right to choose their pathology provider, just as they are entitled to choose their own GP or any other medical practitioner". This is not entirely correct given that the *Health Insurance Act 1973* provides for the treating medical practitioner, not the patient, to make the request for a pathology service, and the Bill does not seek to change this requirement.

From a clinical perspective, the Bill needs to accommodate two situations when a treating medical practitioner:

- is satisfied with the patient choosing the pathology provider for the pathology service; or
- requests a specific approved pathology provider to perform the service.

The Bill covers the first situation and we acknowledge that the majority of requests will be of this nature.

However, the Bill should be amended to include new provisions to cover the second situation. These new provisions should operate in the same way as the current provisions. Where the treating practitioner purposefully makes a request to a specific approved pathology provider, the AMA considers Medicare benefits should only be payable when the pathology service is provided by that pathology provider. As with the current legislation, there would be an exception for the occasions when the approved pathology provider to whom the treating doctor made the request for the service requests another approved pathology provider to perform the service.

This could be simply implemented by introducing a box on pathology request forms that the requesting doctor must tick if he or she wants to ensure that the service is provided by the specific provider to whom the request was made – similar to the tick box on prescriptions that the prescribed medication cannot be substituted with another brand.

We believe it is important for the treating practitioner to have these two options for requesting pathology services for reasons such as:

- the particular expertise of a specific pathology provider;
- confidence in the quality of the service;
- familiarity with the way in which results are reported;
- a preference for the testing methodology used by the pathology provider;
- knowledge that a specific test can be done by a specific provider, or that they are the only provider of that test in the area; and
- a preference to refer the patient to a pathology provider who maintains and reports a longitudinal test result history for the patient.

In regard to this last point, there are some tests requiring longitudinal comparisons of results where it is important that the test be performed in a particular laboratory to ensure consistency and comparability of results. For example, quantitative bHCG results (a common test of hormone levels during pregnancy) must be consistent to allow correct interpretation yet different laboratories use different assay methodologies. Other examples include tests to diagnose and monitor the progress of tumours, such as tests for: alpha foeto protein, used to identify hepatocellular carcinoma; carcinoma embryonic antigen, used to identify a variety of cancers; prostate specific antigen, useful in identifying and monitoring prostate cancer and other prostate conditions; and CA125 and CA19.9 for monitoring tumours of the ovary and pancreas respectively. If a treating practitioner receives results for these types of tests from different laboratories using different assays, they are unable to monitor the relative change in the patient's condition.

An additional issue is that there are also circumstances when the treating practitioner managing the patient's care is a clinical pathologist who must be able to order tests in a laboratory where they have access. It would make no sense for the treating practitioner in this situation not to be able to determine the pathology provider.

In effect, the AMA's proposed amendment to the Bill would ensure that the current arrangements could continue if the treating doctor chooses, for clinical reasons, to request a specific, named approved pathology provider to perform the service.

In regard to the Committee's specific terms of reference, we raise the following comments.

Onus placed on patients to choose pathology provider

When doctors allow patient choice of pathology provider, it will be important to ensure that patients understand the potential consequences of not keeping their requesting practitioner informed of their intentions (in respect of their choice of provider). Given the measure is a Government initiative, we consider that it is the Government's responsibility to educate patients about the new arrangements, the obligations they place on patients and the potential risks to which patients may be exposed.

To our knowledge, there has been no analysis by the Department of Health and Ageing about the extent to which patient behaviour will change as a result of this measure. We expect the majority of patients who frequently require pathology tests will attend their usual pathology provider.

It is likely that patients who are less frequent users will need to seek their doctors' advice about where to go for testing, and locational convenience may be as important as cost.

Decisions may also need to be made based on purely practical reasons, such as in cases when the treating doctor collects the specimen from the patient, e.g. a pap smear. We are not certain it will be feasible for every pathology provider to collect specimens from every medical practice. Neither would it be practical for every patient to individually take these specimens to a pathology provider: it would be time consuming for the patient as well as potentially risk the integrity of the specimen.

In addition, pathology providers supply different containers to medical practices for particular versions of tests. It will be difficult for medical practices to keep track of the source of supplies from different providers.

In these cases, the most sensible approach is for the doctor to be able to specifically make the request to the medical practice's usual pathology provider.

Problems arising between unknown referring doctors and pathology providers resulting in delays

Most relationships between treating practitioners and pathology providers are supported by electronic systems to send requests and receive results between the practices, but this does not occur universally between all pathology providers and all treating medical practitioners.

It is important for medical practices to know with which pathology provider they need to follow up pending results, as part of their duty of care to the patient. For the new arrangements to work effectively and not compromise patient safety and quality of care, we expect pathology providers will need to introduce arrangements to inform treating practitioners that they have received a request made by that practitioner and for which patients.

In addition, approved pathology providers will need to expand their existing systems to ensure that all treating practitioners are able to electronically receive the results of any and all tests in a timely way.

The AMA is concerned about the increased exposure to doctors of the medico-legal risks of not being able to satisfactorily follow up test results. In *Tai v Hatizistaurou* (1999) NSWCA 306 and *Kite v Malycha* (1998) 71 SASR 321 the doctors were found negligent because patient referrals for treatment and the outcomes of pathology tests were not followed up. There will be implications for medical indemnity premiums and related cost pressures.

We are not confident that there has been sufficient work by the Government to ensure a smooth transition to the new arrangements. From a patient safety perspective, it is not good enough to make the legislative change and leave the medical profession to resolve the implementation issues.

Accordingly, we recommend that pathology providers and medical practices be supported by Government to expand their existing systems and business protocols to accommodate the new arrangements.

Problems arising from inconsistent measurement series and reference ranges
As noted above, different pathology laboratories use different assay methodologies. It is not always possible for a treating doctor to manage a patient if they attend different laboratories. For example, the quantitative results of bHCG (a common test of hormone levels during pregnancy) must be consistent to allow correct interpretation of results.

Further, different software packages format longitudinal results differently. For example, the latest results can either be on the right hand side or the left. Treating doctors who use the same pathology providers become familiar with the location of key information. Errors could occur if treating doctors are reading report formats they are not familiar with.

The AMA recommends that software developers be encouraged to standardise their reporting formats, especially for longitudinal comparison of results from different pathology providers to facilitate correct interpretation of results.

Impact on arrangements between GPs and pathology providers relating to emergency and out-of-hour contacts
As stated above, there will be practical reasons why a treating doctor will need to make a request to a specific pathology provider, including in urgent situations.

There is no doubt that medical practices and pathology providers will need to expand on their existing relationships and communication channels to accommodate the new arrangements, particularly in urgent situations.

In conclusion, as the Committee's terms of reference for the inquiry has identified, there are a number of issues that need to be resolved for a smooth transition to the new arrangements.

We believe our proposed amendment will allow treating doctors to make pathology requests to specific providers, not only for clinical reasons but also for practical reasons.

If the Australian Parliament makes the amendment we have proposed we see no reason why the new arrangements could not start on 1 July 2010 as per the Bill. If the amendment is not made, it would be necessary for the commencement date to be delayed by at least six months to give medical practices and pathology providers time to adjust.

Yours sincerely

Dr Andrew Pesce
President

30 March 2010